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A TEXTBOOK OF INDIAN ADMINISTRATION

BY

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GEOFFREY CUMBERLEGE
OXFORD UNIVERSITY PRESS

Price Rs 6-8

Oxford University Press, Amen House, London E C 4

EDINBURGH GLASGOW NEW YORK TORONTO MELBOURNE
WELLINGTON BOMBAY CALCUTTA MADRAS CAPE TOWN

Geoffrey Cumberlege, Publisher to the University

First edition, 1926
Second revised edition, 1929
Third edition, 1931
Fourth revised edition, 1933
Fifth edition, 1934
Sixth edition, 1935
Seventh revised edition, 1936
Eighth revised edition, 1939
Ninth revised edition, 1943
Tenth revised edition, 1947

PRINTED IN INDIA AT THE DIOCESAN PRESS, MADRAS (P I C NO Q H MS 5)
AND PUBLISHED BY GEOFFREY CUMBERLEGE OXFORD UNIVERSITY PRESS,
MADRAS (P I C NO MS 1) DATED 25-9-1947—C545.

PREFACE TO THE TENTH EDITION

CHANGES of very great importance and of a very fundamental character have taken place in the structure of the Indian polity during the course of the last few months. An attempt has been made to make the information in this new edition as up-to-date as possible. The Introduction gives a brief survey of all important developments that have taken place recently, including the passing of the India Independence Act 1947

M R. P.

BOMBAY
July 1947

PREFACE TO THE FIRST EDITION

I HAVE attempted in the following pages to describe the growth of British administration in India from the days of the East India Company to the present times. The book is mainly intended for Intermediate Arts students of Bombay University and I hope it will prove interesting also to the general reader. It had to be brought out in difficult circumstances. After the manuscript was handed over to the Aryabhushan Press in Poona, a disastrous fire reduced, along with many other valuable things, the printed matter to ashes, with the result that printing had to be done hurriedly again and the book brought out in less than a fortnight's time. But for the willing and cordial help rendered to me by my friends, Mr H P Desai, M A, of the *Bombay Chronicle*, and Professor Y D Joshi of Surat, and by the management of the Bombay Chronicle Press, the book would not have seen the light of day so soon. I am therefore extremely thankful to them.

I must also express my sense of gratitude to Professor P A Wadia for kindly going through a large part of the manuscript and for making valuable suggestions.

M R P

SURAT, 1926

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INTRODUCTION

THE rejection of the Cripps Offer by the Indian political parties and the subsequent 'Quit India' Resolution passed by the Indian National Congress in August 1942 led to a deterioration in the political situation in India. A vigorous campaign was launched against the Government, all the important leaders of the Congress were detained in jail without trial for an indefinite period, many restrictions were imposed on ordinary civic life. Popular government had ceased to function in most of the provinces since the end of 1939 and its place was taken by a purely bureaucratic rule. The Viceroy's Executive Council had indeed been expanded and considerably Indianized in 1941 and 1942, but the discontent of the people against the existing constitutional position continued to be as acute and widespread as ever.

In England, a Coalition Government which was in fact predominantly conservative in character appeared to be firmly entrenched in power. This helped to accentuate the sense of pessimism which had arisen in the Indian mind because many leading members of that Government were known to be holding pronounced imperialistic views. On the other hand, the vicissitudes of World War II and the ideological aspirations and loyalties that it had inspired were also exercising a powerful influence on the Indian mind.

§1 HINDU-MUSLIM DEADLOCK

Meanwhile, the communal conflict between the Hindus and Muslims spread more bitterness and antagonism. The Muslim League, the most representative organization of the Mussalmans in India, began to propound the two-nation theory insisting that Mussalmans are not merely a minority but a separate and distinctive nation with its own religion, laws and culture and having nothing in common with the Hindus. They demanded that in the future constitutional set up of India there must be carved out, out of Indian territory, a separate sovereign Muslim State which was to be designated as Pakistan. That alone could assure them their legitimate freedom.

The Congress and the Hindus generally did not accept the two-nation theory. They held that history belies the contention that there is nothing common between the Muslims and Hindus. Centuries of close contact and common life in the same land had produced in many ways a remarkable synthesis of the Hindu and Muslim cultures and the last few decades had witnessed the growth of an Indian nationalism irrespective of religion or community. Besides, a large majority of Mussalmans in many parts of the country were originally Hindus who were converted to Islam. It was urged that religion by itself does not suffice

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to constitute the concept of nationhood which is much more generic and inclusive. The Congress was therefore strongly opposed to what they described as the vivisection of India and insisted upon the preservation of its political, like its geographical and cultural, unity.

There was thus a complete deadlock. The Muslims were not prepared to take the risk of throwing in their lot in a constitutional arrangement devised for the country as a whole, because they felt they would never get any effective control in its working. Being a numerical minority in the population of the whole country—about nine crores out of forty—they would inevitably be a perpetual minority in the Central Government also, however limited and weak that Centre may be. Under these circumstances, there was no hope for Muslims as such ever getting a chance of forming and running the government and exercising real power.

The Congress in reply pointed out that political parties are formed for the betterment and uplift of the people as a whole. Their membership is not based on religion, race or community but on an allegiance to common ideals and programmes and is therefore open to all. Muslims in such a party, whenever it secures an electoral majority, are bound to share in its offices and power. In the opinion of the Congress the approach of the Muslim League to the problem was fundamentally wrong because it identified religion with politics and did not appear to contemplate an organization, essentially non-communal and non-sectarian in character, devoted to bringing about the progress of the people of the country as a whole.

All these factors contributed to make the Indian situation extremely tense, fluid and unpredictable. They engendered a sense of frustration, suspense and despondency and a general atmosphere of uneasiness and uncertainty spread throughout the country.

§2 FORMATION OF A LABOUR GOVERNMENT IN ENGLAND

The War with Germany came to an end in May 1945. However the war with Japan continued with unabated fury till the middle of August. Rather unexpectedly, even in the midst of the preoccupations of that struggle, Parliamentary elections were held in England after a lapse of nearly ten years. The Labour Party obtained a surprising victory at the polls and captured a large majority of seats in the House of Commons. A Labour Government with a strong backing in Parliament was established in office early in August 1945.

This was a momentous change which appealed to the imagination of the Indian people. The Labour Party had the reputation of holding advanced political views and of being

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committed to a policy of implementing socialistic ideals and programmes. They had often expressed their full sympathy with and support for the cause of India's freedom and had promised action to secure it when the opportunity came. Their advent to power naturally roused great hopes. A few days later the war with Japan also came to an end and the world heaved a sigh of relief at the conclusion of such a prolonged and horrible calamity.

These forces helped to ease the political tension in India. Steps were taken to resolve the political stalemate that had distorted and damaged its public life for over six years. The imprisoned top-ranking Congress leaders were released, fresh elections were ordered to be held to provincial legislatures, Section 93 which had been in operation in most of the provinces since the close of 1939 was revoked, and early in 1946 popular ministerial governments were established in those provinces after a lapse of over six years. Mr Attlee, the Prime Minister, gave the assurance that his Government would take early action to implement the promises made to India.

§3. THE CABINET MISSION TO INDIA

In pursuance of their policy of speeding up the process by which India would be enabled to achieve her freedom without delay, His Majesty's Government sent out in March 1946 a special Mission to India headed by the Secretary of State and containing two other cabinet ministers¹. The Mission stayed in India for three months, held prolonged discussions about the Indian problem with Indian leaders of all shades of opinion and endeavoured to help them to arrive at an agreed formula for its solution. They even succeeded in bringing the Congress and Muslim League leaders to a joint conference in Simla.

Unfortunately, their efforts failed. The gap between the viewpoints of the Congress and the League appeared to have considerably narrowed but nonetheless it was also found to be unbridgeable. The League was irrevocably committed to the achievement of Pakistan, the Congress was strongly opposed to a division of India, though it unreservedly accepted the principle of self-determination and expressed itself to be against coercing any unwilling part of the country into joining the Indian Union.

After the failure of the Simla conference, the Mission and the British Cabinet considered the future course of action, and with the full approval of His Majesty's Government the Cabinet Mission made their famous statement on 16 May 1946. The proposals made in the statement were not in the nature of a final political award made by a superior authority. Their object was to set up in India as early as possible a suitable machinery

¹ Lord Pethick Lawrence, Sir Stafford Cripps and Mr A. V. Alexander.

to enable Indians to decide and frame the future constitution of their country. It was also intended that till such time as the new constitution could be brought into being there should be set up in India an Interim Government having active support of the major political parties and composed of their prominent leaders

§4 PROPOSALS OF THE CABINET MISSION

The long-term constitutional plan devised by the Mission was a deliberately and delicately balanced *via media* between the conflicting claims of the division and unity of India. There were to be no separate sovereign states of Hindustan and Pakistan but one single Indian Union comprising the whole of British India and such of the Indian States as may decide to join the Union. However, the authority of the Central Government in the Union was to be very limited, its powers were to be confined to the administration of only three subjects—defence, external affairs and communications with power to raise the necessary finance. All the remaining subjects, including residuary powers, were to vest in the provinces who were to enjoy complete autonomy in their sphere.

The really ingenious novelty of the plan consisted in the introduction of a third intermediate tier between the Centre and the Provinces, namely the Section and the Group. It was laid down that practically at the very commencement of the process of constitution-making, the provinces shall sit in three separate Sections. The Muslim majority areas comprising the provinces of the Punjab, North-West Frontier Province, Sindh and British Baluchistan in the West and Bengal and Assam in the East were to form respectively Sections B and C, the remaining predominantly Hindu provinces were to form Section A.

The constitutions of the provinces in a particular Section were to be framed by the Section, the latter had also to decide whether its provinces should form a Group and if so frame a constitution for the Group and determine the provincial subjects that should be assigned to it. In Sections B and C Muslims would have a majority of votes and therefore the decisive voice, in Section A the deciding power would lie with the Hindus. Muslim aspirations behind the demand for Pakistan would thus be satisfied without the creation of Pakistan, they would have real power in the framing of a constitution for and control of the government of the Pakistan areas.

On the other hand, it was also provided that if any province was unwilling to continue in a Group it would have the liberty of opting out of it as soon as the new constitutional arrangements had come into operation. Such a decision was to be taken by the legislature of the province after the first general election under the new constitution.

The reception accorded to the Mission's proposals recorded many fluctuations and vicissitudes. The Muslim League, though very critical of the rejection of its demand for Pakistan, accepted the scheme. The Congress did the same with its own interpretation of the Grouping clauses. It asserted that though every province had necessarily to be in the particular Section in which it was placed, no province could be compelled to join a Group, that would be inconsistent with the principle of provincial autonomy which the Mission had clearly enunciated.

The Congress also pointed out another disturbing possibility. The constitutions of individual provinces and of Groups, if any, formed by them were to be framed by the appropriate Sections. If the right of opting out which was conceded to the provinces could be exercised only after the new constitution had actually been brought into being, it was feared that the numerical majority in a Section may so frame the conditions and provisions for opting out that it may practically become very difficult if not impossible to do so. The right may thus prove to be entirely illusory. The Congress was therefore insistent that voting in the Section could not be merely by a simple majority of numbers, it must be by the unit of provinces. Such a procedure was particularly necessary to assure a province such as Assam with its overwhelming non-Muslim majority that it would not be compelled against its will to be grouped together with Bengal.

The Muslim League regarded such an interpretation as nullifying the long-term plan and the delicately balanced compromise that it embodied. Voting by provinces and not by a simple majority of numbers would completely nullify the reality and effectiveness of Muslim power in the Sections B and C. The League considered that the Congress acceptance of the plan was no acceptance at all. As a protest against such an attitude, the Muslim League Council at its meeting held in Bombay in July 1946 withdrew its earlier acceptance of the Cabinet Mission's plan and passed a Resolution recommending direct action for achieving the goal of Pakistan.

§5. FORMATION OF THE INTERIM GOVERNMENT

Meanwhile, in accordance with the recommendations of the Cabinet Mission, strenuous efforts were made to set up a fully popular government at the Centre. The statutory obligation that at least three members of the Viceroy's Council must be officials who had served in India for a period of not less than ten years was removed by a Parliamentary amendment of the Act of 1935. Thereafter all the members of Government could be non-officials. Negotiations were started with both the Congress and the League to induce them to join the Viceroy's Council.

The proportion of seats in the Executive Council to be

allotted to the Congress and the League proved to be a difficult stumbling block. The League demanded parity with the Congress. It also insisted upon the exclusive right of the League to nominate Muslim members. These demands were however not conceded. Ultimately, an agreement was arrived at between the Congress and the Viceroy, and on 2 September 1946 an Interim Government was formed by Congress leaders headed by Pandit Jawaharlal Nehru who was appointed Vice-President of the Council. The Muslim League held off from this Council for some time but ultimately came in six weeks later.

The following is the distribution of portfolios in the Interim Government (1) External Affairs (2) Defence (3) Finance (4) Home (5) Transport and Railways (6) Legislative (7) Industries and Supplies (8) Works, Mines and Power (9) Education (10) Food and Agriculture (11) Commerce (12) Labour (13) Health (14) Communications (Posts and Air). Of these, six were given to the Congress, five to the Muslim League and one each to the other minorities—Sikhs, Parsees and Indian Christians. The names of these three members were suggested by the Congress. The Muslim League in their quota included the name of a Scheduled caste member from Bengal.

The whole idea of this arrangement was that in fact if not in law a real popular Government with full powers would function at the Centre till the introduction of the new constitution and even to facilitate that introduction. The Viceroy would voluntarily abstain from using his powers and entrust the whole responsibility of government to the Executive Council. He would reduce himself to the position of a constitutional ruler and would endow the Council with the status of a responsible cabinet, functioning under the leadership of its Vice-President, who for all practical purposes would be the Prime Minister. It was also expected that though members of the Council are legally irresponsible and irremovable they would consider themselves as the servants of the people and act according to their wishes.

The Muslim League has not however accepted the position that the Council is a cabinet, they are opposed to working on the principle of collective responsibility and to regard the Vice-President as the leader of Government. The Congress and the League sections of the Government are reported to be working independently of each other. Common meetings of the whole Cabinet do not seem to be frequent. Congress members have publicly complained that their Muslim League colleagues have not been working in a spirit of co-operation, that the Central Government has thereby come to suffer from paralysis in certain respects. Such a Government cannot be described even as a coalition because the latter presupposes a certain minimum common ground. It is rather a composite admixture

of elements, a section of which does not intently want to cohere with the rest to any extent and even to obstruct them.

§6 ELECTION TO AND INAUGURATION OF THE CONSTITUENT ASSEMBLY

According to the Cabinet Mission's plan elections to the Constituent Assembly were held by the newly elected provincial Legislative Assemblies in October 1946. The League contested the elections and captured almost all the Muslim seats, but the League Council's Resolution refusing to participate in the deliberations of the Constituent Assembly still remained unchanged. It was the general impression that the League's joining the Interim Government automatically implied the obligation of its joining the Constituent Assembly. The Viceroy stated as much in his letter to Pandit Nehru. Mr Jinnah however denied that he had ever given such an assurance or that there was any such an obligation.

The Congress felt exasperated at this attitude of the League which it regarded as a deliberate attempt to destroy the Constituent Assembly, to disrupt the Central Government and foster administrative chaos. The League on the other hand charged the Congress with dishonest duplicity in appearing to accept the Cabinet Mission plan but with an interpretation which killed its fundamental basis, to the detriment of Mussalmans and their interests. The situation developed into a first class crisis. Strong representations were made to His Majesty's Government either to persuade the League to participate in the Constituent Assembly or to leave the Interim Government. The Congress also expressed its determination to proceed with the work of the Constituent Assembly whether the League came in or not, the Assembly was scheduled to meet on 9 December 1946.

The British Government then invited the party leaders to a conference in London and Mr Attlee cabled a personal request to them to accept the invitation. Accordingly, they left for England at the end of November and spent a week there in holding consultations and discussions. History however repeated itself, no agreement was reached and the deadlock remained unresolved. On 6 December the British Government issued a statement clarifying the position of the Grouping clauses and giving its own authentic interpretation of their provisions. They said that the Cabinet Mission have throughout maintained that decisions of the Sections should, in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the Sections and that legal advice they have taken has confirmed that view. Therefore that interpretation must be taken as an essential part of the scheme and accepted by all the parties. The stand taken by the Muslim League was thus completely upheld.

In the meantime, the inaugural meeting of the Constituent Assembly was held in New Delhi, according to time-table, on 9 December 1946. It sat for a fortnight, disposing of considerable preliminary business and adjourned on 23 December for a month. Early in January 1947 the Congress accepted the interpretation of His Majesty's Government regarding the Grouping clauses, though the acceptance was accompanied by a bitter attack on that Government. It was then felt that the League members would join the Constituent Assembly, the next meeting of which was fixed for 20 January. The League leaders were not however in a hurry to call the Council before that date, and once again the Assembly met without the representatives of the League. Further business was transacted at these meetings.

At last on 31 January the Working Committee of the League passed a lengthy Resolution reviewing the events of the past six months, charging the Congress with evasions, equivocations and camouflage, condemning the nature of the work already done by the Constituent Assembly and denouncing that body and its proceedings and decisions as void, *ultra vires*, invalid and illegal, and demanding its dissolution forthwith.

Even the faintest hope of a compromise between the major parties was now finally dissipated and the political stalemate assumed very grave proportions. Communal riots, causing enormous loss of life and property, had already broken out on a large scale in different parts of India. The working of an Interim Government composed not only of such heterogeneous but mutually hostile elements produced constant friction with highly demoralizing effects. The battles of the larger political arena inevitably had their vigorous counterparts inside the Council chamber. A Government at war within and against itself could not fulfil even its primary and elementary obligations to the people at large. It was an impossible and dangerous position.

The British Government were now fully convinced that a solution of the Indian problem by agreement among Indians themselves was impossible. There was also the criticism in India that, agreement or no agreement, if the British rulers were honest and sincere in their intention of transferring power to Indian hands they should do so and leave India as soon as possible. It was even argued that their departure might hasten the solution of the deadlock when Indians were left to themselves. The fixing of a definite date for the relinquishing of their authority by the existing rulers was bound to bring Indians face to face with the very difficult problem of filling in the gap, and create in them a sense of healthy realism and a chastened mood.

§7. BRITISH GOVERNMENT'S STATEMENT
OF 20 FEBRUARY 1947

His Majesty's Government then acted swiftly. They had made up their minds that the promises made to India must be honoured and fulfilled without loss of time and British authority over the country be completely withdrawn. Accordingly, on 20 February 1947, they made the epoch-making declaration that it was their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948. They also made it clear that as the existing Constituent Assembly was not fully representative, the Muslim League having boycotted it, they would have to consider and decide to whom to transfer power, whether to one or to more than one authorities. Lord Wavell was recalled from the Viceroyalty, in his place was sent Lord Mountbatten entrusted with the task of transferring responsibility to Indian hands.

§8 DEMAND FOR THE PARTITION OF BENGAL
AND THE PUNJAB

The Muslim League's uncompromising insistence on securing Pakistan even after this declaration and, in the circumstances, the clearly discernible likelihood of its being conceded, though under duress, had an important sequel. The whole case for the partition of India was that Muslims did not want to live as a perpetual minority in the country as a whole, 'as hangers on of the majority population', but wanted to enjoy real sovereign power in areas in which they were in a clear majority. They claimed that the whole of Bengal and the whole of the Punjab must be included in the sovereign state of Pakistan, along with Sind, North-West Frontier Province, British Baluchistan and Assam.

The question of Assam could not really evoke a serious controversy, it had an overwhelmingly large non-Muslim population and the League's claim regarding it had no justification. The population of one of its southern districts, Sylhet, had a majority of Muslims. At the most that district could, if it so wished, be separated from Assam and annexed to the neighbouring Muslim majority area of East Bengal after ascertaining the wishes of the latter.

The case of Bengal and of the Punjab was much more complicated and difficult. As the Cabinet Mission pointed out, there are large non-Muslim blocs of population and territory in both the provinces, they form substantial minorities in the respective provinces—12 millions out of 28 in the Punjab and 27 millions out of 60 in Bengal—and in certain wide areas actually constitute a majority. West Bengal for instance is predominantly Hindu, so is East Punjab predominantly Hindu and Sikh.

The non-Muslim people of these areas now began to urge strongly that they would never consent to becoming a perpetual minority by being forced into the State of Pakistan, that they, like Muslims, were eager and determined to preserve their own traditions and culture and maintain their identity, that by the same logic and reasoning by which India was to be partitioned, the provinces of the Punjab and Bengal must also be partitioned to prevent the non-Muslims of those provinces from being submerged into swamped by majority rule. The Muslim League denounced this move because if successful it would result in 'a truncated, moth-eaten, dilapidated Pakistan', instead of its being 'viable'. The Congress on the other hand supported the demand of the partition of the provinces as an inevitable corollary of the breaking up of India's political unity.

Within a few weeks of his arrival in India Lord Mountbatten was able to assess the situation in the country with all its implications and complications. He had had interviews and discussions with party leaders, obtained first-hand information about the terrible communal riots that were afflicting many parts of India and found that the demand for Pakistan had not slackened but even strengthened after the declaration of 20 February. He ruled out United India as an impossibility in the existing state of communal passions and in face of the Muslim League's determined opposition to it. He was convinced that partition was the only way out of the impasse, partition on a consistent and rational basis, and communicated his views to His Majesty's Government who summoned him to London for personal consultations. He returned to India at the end of May.

§9 BRITISH GOVERNMENT'S STATEMENT OF 3 JUNE 1947

After discussions with Lord Mountbatten His Majesty's Government agreed to and framed their plan for the division of India. On 3 June 1947 a statement was issued to the public explaining the plan and the procedure laid down to implement it. First of all, public opinion in the provinces concerned was to be formally ascertained as to whether there should be partition. If the reply was in the affirmative, steps were to be taken forthwith to effect it.

Public opinion was to be ascertained in the following manner. The Legislative Assemblies of the Punjab and Bengal were to sit in two separate sections, one consisting of members representing the Muslim majority districts and the other consisting of members representing the non-Muslim majority districts. Each Section was to vote on the question whether it desired partition. If either of them voted in its favour, partition was to become an accomplished fact as soon as possible. The Sections had also to decide which Constituent Assembly they wished to

join—the existing one or a new one. Boundary Commissions were to be appointed to demarcate the exact boundaries of the separated areas

The case of the North-West Frontier Province was peculiar. In the elections to its Legislative Assembly in 1946 the Congress party had secured a majority of seats and a Congress Ministry was installed in office. Two of the three representatives elected by that province to the Constituent Assembly were taking part in the deliberations of that body. The Muslim League however started a vigorous campaign against the Congress Ministry. The situation unfortunately deteriorated to a great extent, religious passions were roused to a high pitch and bitter communal riots broke out in several parts of the province. The League claimed that the issue of Pakistan must be specifically put before the masses of the population for a clear expression of their opinion.

The geographical situation of the province was also a factor of considerable importance. It was bounded on all sides by the Pakistan area—Western Punjab, Sind and Baluchistan. Its position as a member of the Indian Union was not therefore likely to be easy. Lord Mountbatten and His Majesty's Government felt that unlike Bengal and the Punjab the procedure for ascertaining the wishes of this province should be more elaborate than taking the vote of its Legislative Assembly. They decided that a referendum under the aegis of the Governor-General should be held among those who were voters for the Legislative Assembly on the question whether they wanted to join the existing Constituent Assembly or a new Constituent Assembly, in short whether they want to be included in Pakistan or in India.

Provision was also made for a referendum in the Muslim majority district of Sylhet in Assam. If it was decided that Bengal should be partitioned, a referendum was to be held in that district under the aegis of the Governor-General to decide whether Sylhet district should continue to form part of the Assam province or should be amalgamated with the new province of Eastern Bengal, if that province agreed. If the referendum resulted in favour of amalgamation with Eastern Bengal, a Boundary Commission was to be set up to demarcate the Muslim majority areas of Sylhet district and contiguous Muslim majority areas of adjoining districts, which would then be transferred to Eastern Bengal.

His Majesty's Government also announced that in response to the desire of the major political parties that there should be the earliest possible transfer of power in India, they were willing to anticipate the date of June 1948 by the setting up of an independent Government or Governments even earlier. They therefore proposed to introduce legislation during the current session of Parliament for the transfer of power on a Dominion Status basis to one or two successor authorities as may be

decided by the Indian people. This would be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not to remain in the British Commonwealth.

In accordance with the procedure laid down in this statement the Legislative Assemblies of the Punjab and Bengal met in two different sections, one consisting of the representatives of the Muslim majority areas and the other those of non-Muslim areas. As result of the voting it was decided that the two provinces should be partitioned, the actual boundaries being settled by the Boundary Commission. It was also decided that the Muslim majority provinces of Western Punjab and Eastern Bengal should not join the existing Constituent Assembly but should have another Assembly of their own. The Sind Legislative Assembly took a similar decision and voted for a new Constituent Assembly. British Baluchistan followed the same line. These developments took place in the last few days of June 1947.

Early in July, a referendum was taken in the North-West Province and the Sylhet district of Assam, in the former to decide whether the province desired to join the existing Constituent Assembly or a new one and in the latter to decide whether it should continue to be a part of Assam or should join the new province of Eastern Bengal. The Congress party in the Frontier Province boycotted the referendum. They had demanded that the Pathans should be allowed to vote on a third alternative, namely, a separate Constituent Assembly for the Frontier Province only and leading to the establishment of a separate sovereign Pakhtun State. The demand was not conceded. The Muslim League party alone then participated in the referendum which proved to be against joining the existing Constituent Assembly and in favour of a new one. The referendum in Sylhet district favoured amalgamation with the new province of East Bengal.

Meanwhile, on 4 July, the Indian Independence Bill was moved in Parliament and within less than a fortnight was passed into an Act. In accordance with its provisions two independent Dominions, India and Pakistan, were to be set up on 15 August 1947 and all power in regard to them was to be transferred to their respective popular governments. On the recommendation of the Congress and the Muslim League, Lord Mountbatten and Quaid-e-Azam Jinnah were to be appointed Governor-General of India and Pakistan respectively.

PART I

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I A BRIEF SURVEY OF THE BRITISH CONQUEST OF INDIA

§1 THE EAST INDIA COMPANY

THE rise and growth of British administration in India is a comparatively recent occurrence in the pages of Indian history. It is closely connected with the establishment of British supremacy over this vast country. The acquisition of a big empire was naturally followed by the development of a constitutional structure. Conquest and governance were parallel movements and were also related to each other as cause and effect. It will be interesting to notice very briefly the important land-marks in the expansion of British authority over the Indian continent. Such a survey will give the proper background to a study of the evolution of the Indian administrative system during the last hundred and seventy years.

One striking peculiarity of the conquest of India must be noted at the outset. The task was not directly undertaken and accomplished by the British Government on behalf of the British people. It was not as if the King and Parliament of England had deliberately set out on the grand military adventure of conquering a big dominion beyond the seas. The British nation as a nation was not inspired by the ideals of an aggressive imperialism in those days. The credit for building up the British empire in India belongs to a trading corporation known in history as the East India Company. That famous body was a private shareholders' concern and was founded in England by a special Royal Charter issued by Queen Elizabeth in 1600. It was intended to be a purely commercial organization and was invested with the exclusive monopoly of trade in eastern waters.

During the first century of the Company's existence, India was ruled by mighty emperors like Akbar, Jehangir, Shah Jehan and Aurangzeb. They created in the mind of the foreigner fear and respect for their state. Throughout this remarkable period, the Mogul power was marching towards its zenith and Mogul splendour was rising to its meridian. In the blaze of this glory no contemporary Indian could have suspected that the rise of a commercial company in distant unknown England was a very ominous fatality for India. The event could hardly have excited his curiosity, much less his concern or anxiety.

All the earlier efforts of the Company's servants were directed to the expansion of trade. They had no political ambition or

aptitude whatever ' Their attention was often focussed on securing from the Indian emperors special trading ' **The** ' **factories** ' of privileges and concessions The only territorial ' **the Company** ' possessions of the Company at this time were the ' **factories** ' or commercial stations in different parts of India, which were not held in the exercise of political sovereignty but rather in the enjoyment of a civic privilege Private property could be obtained and owned by the East India Company as by any citizen of the Mogul empire No other pretensions were allowed by the Indian monarchs

§2 THE DOWNFALL OF THE MOGUL EMPIRE

The complete disappearance of capable and powerful sovereigns from the Indian stage during the eighteenth century was startling It created a dangerous void in the political and social life of India The Mogul empire seemed to have fallen into ruin The mechanism of its centralized control was completely paralysed Seized by the forces of disintegration, the noble and imposing edifice which had filled the Indian picture for nearly two centuries began to crumble to pieces Internal rebellions and external invasions shattered the very foundation and the fabric of its being

In this state of political confusion, there arose a keen struggle for existence and a desperate contest for supremacy Ambitious viceroys and generals began to assert their own independence and the subject Hindu states began to regain their freedom The East India Company had by now finished over a century of eventful existence They had acquired a good deal of self-confidence and their activities had sometimes extended beyond the narrow limits of mere trade An intriguing political transformation scene was being gradually enacted in their immediate vicinity and they began to be deeply interested in the formations of that momentous change The prospect of acquiring territory exercised a weird charm even over the East India Company, and in the end that commercial body was inevitably drawn into the vortex of Indian politics

A fairly long and fruitful contact had been established between the Company and several ruling princes in India Discerning observers in their service had been able to gain an accurate insight into the resources and abilities of their royal neighbours They were astonished and delighted by the very significant revelation that governmental authority in many parts of the country had been fundamentally sapped It had perceptibly deteriorated into a condition of final decadence The traditional pomp and pageantry did indeed continue to surround the courts of Indian rulers.

INDIAN ADMINISTRATION

But that external emblem of glory had ceased to be the vital reflection of a strength that was real and profound. Behind its dimmy gloss was unmistakably lurking a fatal and deep-seated weakness, a profound and portentous emptiness, that clearly foreshadowed the impending doom of most of the Indian States.

This knowledge was particularly tempting to the more militant spirits in the employment of the Company **Directors opposed to aggression** They believed that the Company could build up its own empire in India without serious difficulty. It was their keen desire to be allowed to take a fateful plunge into that stirring adventure. But the Directors in England were inclined to look upon such projects with considerable misgiving. They had very little faith in the sobriety and judgement of their Indian servants. Schemes of territorial aggression appeared to them to be not only fantastic but full of grave risk. However, in spite of the persistent opposition of these distant masters the men on the spot in India managed to indulge in the fascinating game of empire-building. Their unauthorized exploits proved to be extremely opportune and were crowned with brilliant success.

3 THE EXTENSION OF BRITISH POWER

The first serious engagements in which the Company actively participated were fought in the Carnatic between **The Carnatic Wars** the years 1740 and 1750. The French were very active and influential in South India at this time and constituted a strong menace to the advancement of the British Company. However, the French ascendancy soon began to decline and within less than a century it had completely collapsed and vanished. The dreams of Dupleix could not be realized by the French power. On the other hand British prestige in South India was considerably enhanced after the defeat of their most capable European rival.

The battle of Plassey which was supposed to have avenged the tragedy of the Black Hole¹ was fought in 1757 **The battle of Plassey** between the Nabob of Bengal and Lord Clive acting on behalf of the East India Company. From the purely military point of view, this historic event was little more than a short skirmish. The treachery of Mir Jafar who was the Nabob's commander made a decisive contribution to the Company's victory. Yet the result of this battle was a change of political mastership over the extensive provinces of Bengal, Bihar and

¹ The occurrence of the tragedy of the Black Hole has been disputed by certain eminent writers in recent years. Their chief contention is that there is no direct contemporary evidence from either Muslim, Hindu or European sources to prove the occurrence and that the story was ingeniously worked up at a later stage by an official of the Company, Mr Holwell, whose motive and veracity are not above suspicion.

Orissa Few events in history could be found to present such a ridiculous disproportion between the insignificance of the military effort and the richness of its reward.

The battle of Buxar which followed in 1764 had an importance of its own. Two powerful Viceroy, the Nabob of Bengal and the Nabob Vazir of Oudh, had combined with their nominal master, the Emperor Shah Alam, to resist the penetration of an alien intruder into their dominions. But even the combined strength of these combatants was easily shattered by their English enemy. This was the first occasion on which the Company was involved in direct hostility against the Emperor of India. That august dignitary had now shrunk into a pale spectre of his former self. But the defeat of even the titular monarch of Hindustan by the East India Company had its psychological value to the victors. In addition, it yielded very substantial material benefits in the shape of Diwan rights which the Emperor was persuaded to grant.

Warren Hastings became Governor-General at a time which proved to be critical for the British power in both India and America. The Marathas, Haider Ali and Tippu Sultan were opponents of a very superior calibre and the Company's forces were effectively routed by them in at least two engagements. The task of Hastings was essentially to preserve the integrity of the Company's possessions and to prevent them from slipping out of the Company's hands. He accomplished it with conspicuous success, though not with a particularly scrupulous regard for morals. Even in this respect, however, he was not a greater sinner, but a more unfortunate victim of circumstances than some of his successors.

Lord Cornwallis was a man of will and action. Apart from several innovations in civil government which are associated with his name he conducted vigorous campaigns against Tippu Sultan and firmly established British supremacy over a large territory in South India. His powerful personality gave considerable impetus to the forward movement of British arms.

The subsidiary alliances of Lord Wellesley marked the beginning of the end of several Indian kingdoms. Those treaties were unique instruments, as ingenious in design as they were successful in effect. The victims who submitted to their relentless operation exhibited an amazing lack of understanding and resistance. They failed to realize that protection by the British army also meant subjection to its authority. The incapacity to grasp this simple truth betrayed a dangerous intellectual and moral exhaustion of the governing classes in India. The Nizam, the Peshwa and all the important Maratha States in central and northern India accepted.

sooner or later, the contracts proposed by Wellesley, and thus voluntarily receded into a condition of political dependence.

Lord Hastings completed the work which was so enthusiastically begun by Wellesley. With the defeat of the Marathas in 1818, almost the whole of India passed into British hands. Only the two frontier provinces of Sind and the Punjab had remained unconquered, but they could not hold out long. Hardinge and Dalhousie gave a final stimulus to the process of absorption and annexed several provinces in different parts of the country. On the map the red colour had spread over the whole of India before the momentous outbreak of the great Indian Revolt in 1857.

The Revolt was the last brave attempt to resurrect Indian independence, but it was doomed to end in utter tutility and disaster. The movement did not lack vigour. It attracted numerous fiery adherents. But a dominant, cohesive and intelligent leadership was conspicuously lacking. The organization and equipment of the rebel forces could not be adequate for fighting an essentially modern foe. Nor did the tumult possess that innate volcanic strength which characterizes a popular revolution. The attempt failed to appeal in some parts of India. The majority of the Indian people remained comparatively passive, and even indifferent, to the rumblings and flashes of this stormy episode.

Thus, after a long spell of uncertainty and conflict, the Company was successful in defeating all its opponents. It was indeed a magnificent achievement for a corporation of traders operating on foreign soil. The Company's victory was at once a glowing compliment to its dynamic activity and a dismal reflection on the lack of vitality, vision and wisdom so woefully displayed by contemporary Indian rulers. Nor could there be a more melancholy testimony to the complete absence of political initiative and conscious self-assertion among the bulk of the Indian masses of those times than their mechanical acquiescence in every new phase of governmental life that was ordained for them by their leaders.

II EARLY HISTORY OF THE EAST INDIA COMPANY 1600-1757

§1 THREE PERIODS IN THE HISTORY OF INDIAN ADMINISTRATION

As the Indian Empire was steadily built up by the incessant **The Company** labours of the East India Company, that mighty **was a unique** corporation soon acquired a unique status. It **intermediary** became the grand intermediary between the British masters of India and the country that was conquered. Parliamentary action in respect of Indian governance primarily and directly concerned the Company. The people of India were only distantly touched through that medium. The study of Indian administration has therefore a close bearing upon the changing fortunes of the East India Company.

It has been pointed out by (Sir C. P. Ilbert) that the history of the growth of the British power in India can be divided into three distinct periods. They represent the transition from commerce to empire, from the constitution of a trading corporation to the development of sovereignty.

The first of these periods begins with the grant of the first **The first period** charter to the East India Company by Queen Elizabeth in 1600 and covers nearly a century and a half till the middle of the eighteenth century, after which the Company definitely tends to become a predominantly political body. During this period the sole object of the Company was trade, though for achieving that object they were invested with certain political powers from very early stages of their career. Still, in all essentials, they were an association of commercial interests. Their activities in India had to be conducted on the sufferance of native rulers and in subordination to their authority. They enjoyed important mercantile privileges granted by them and held certain factories or trading stations in different parts of India. There was also considerable rivalry between the English Company and other similar commercial bodies belonging to different European nations like the Dutch, the Portuguese and the French.

The second period begins from the battles of Plassey and **The second period** Buxar and the conferment of the Diwani rights on the East India Company in 1765. It extends to the final dissolution of the Company in 1858, when responsibility for the government of India was directly assumed by the Crown and Parliament of Britain. During this period the Company acquired territory after territory till their supremacy spread practically over the whole of India. At the same time, they lost their mercantile privileges and functions by gradual stages.

and shared their territorial sovereignty in diminishing proportion with the Crown

Parliament thought it necessary to interfere in the affairs of the Company after that body had undertaken the responsibilities of territorial government. The first instance of such direct interference occurred in 1773 when the Regulating Act was passed for the better management of the Company's affairs in India. This period has been described as the period of Double Government. The East India Company were the immediate authority entrusted with the administration of the country, and Parliament exercised supervision over their actions through the Board of Control which was set up by Pitt's India Act in 1784. Many other Acts were also passed by Parliament to regulate and reform the affairs of the Company.

The third and the last period begins from 1858. The immediate agency of the Company was abolished in that year and the system of Double Government came to an end. The Court of Directors and the Board of Control were replaced by the India Council and the Secretary of State for India. The government of India was directly taken over by the Crown and Parliament of Britain.

As Albert says, the first period is clearly a period of charters. They were issued by the kings of Britain with the approval of Parliament and embodied the privileges and restrictions that were defined from time to time to suit the requirements of a trading corporation. The second period is marked by Acts of Parliament passed at almost regular intervals of twenty years and sometimes even more frequently. These Acts endeavoured to outline an administrative machinery for the territorial possessions which the Company had managed to acquire after 1757. The third period witnesses the development of a constitutional and administrative structure after the direct assumption of authority by the Crown over the Indian continent. Parliamentary legislation was specially undertaken for that purpose, in response to the demands of an awakened Indian nation.

§2 THE CHARTERS

The first charter of the East India Company was granted by Queen Elizabeth in 1600. It empowered the Company to assemble in any convenient place and there hold court and 'make, ordain and constitute reasonable laws and constitutions, orders or ordinances for the good government of the Company, of all factors and officers and for the advancement of traffic and trade'. The direction of the affairs of the Company was vested in a Governor to be elected annually by the members, and in twenty-four committees, each consisting of an individual, also annually elected. The total

**Elizabeth's
Charter**

number of members who were originally incorporated in the Company was 217. Further admissions could be made from among the sons of the original members or apprentices and factors specially selected.

The total capital subscribed is stated to have been £68,378. There was no reference to the joint stock principle and apparently there was equal voting power for all members irrespective of their contributions. The Company then came under the class of Regulated Companies. The members were subjected to certain common regulations and had some common privileges, but each traded on his own capital and for each separate voyage. A group of subscribers would organize a voyage and accounts were wound up on the return of their ships sent out, profits or losses being distributed among the organizers. The earlier expeditions were not directed to India but to the Spice Islands. The third voyage, arranged in 1608, was intended to include India.

In 1609 James I renewed the Charter of Elizabeth. In 1615 **Charters of the Stuart kings** the power of issuing commissions to officers empowering them to inflict punishments for non-capital offences and to proclaim martial law was given to the Company. The Company's monopoly soon began to excite jealousy, and encroachments upon their privileges began to be made by an association started by Sir W. Courten, who obtained from Charles I an independent licence to trade in the East. It was not till 1657 that this rival association was united with the East India Company under the Charter issued by Cromwell.

In 1661 Charles II issued a Charter similar to the one issued by Cromwell. It legally recognized the principle of joint stock which had been accepted in practice since 1612. The Company were also given the right of coining money, and jurisdiction over English subjects in the east. The Charter of 1669 granted Bombay to the East India Company for an annual rent of £10. By charters issued in 1677 and 1683 the Company's privileges were further extended. James II's Charter of 1687 empowered the establishment of Municipal Corporations by the Company.

During the period 1683-5, the question whether the Company's **Parliament and the Company's monopoly** monopoly granted by Royal Charter without the consent of Parliament was legal, was discussed in connexion with the case of East India Company v Sandys. The point was argued before the Privy Council and the legality of the monopoly was upheld. The same question was again raised in 1691 and the same verdict was given. Parliament, however, passed in 1693 the famous resolution that all subjects had an equal right to trade in the East Indies and that as Lord Macaulay has amplified, only the

whole legislature could give any person or society an exclusive privilege. The constitutional point was thus finally settled, though, in practice, the Company's Agents paid no heed to Parliament's resolution and kept the eastern trade closed to all but themselves.

By the Charters of 1693 and 1694 changes were made in the constitution of the Company. One vote was given to each holder of £1,000 stock, but not more than ten votes could be possessed by one man. The Governor and the Deputy-Governor must be holders of £4,000 stock, and a Committee of £1,000 stock. The Governor's and Deputy-Governor's tenure was not to be more than two years. In 1698 the qualification for a vote was reduced to £500 stock and that for a Committee raised to £2,000.

In the meanwhile, a new company had been started in 1688 by the rivals of the old one, and after its incorporation they began to make inroads upon the monopoly of the old Company as Parliament had declared monopolies to be illegal unless granted by them. Attempts in the direction of a compromise between the old and the new companies were made, but without much success. In 1698 the first Parliamentary measure was taken to regulate Indian trade and commerce, when the General Society was incorporated as a Regulated Company and most of the subscribers of this body as a joint stock company. These were steps in the direction of facilitating a compromise or a coalition between the old and the new companies. It was, however, not until 1708 that the final coalition was effected under what is known as Godolphin's Award, by which the old Company's charters were surrendered and all their powers and privileges were transferred to the new Company under the name of the 'The United Company of Merchants of England Trading to the East Indies'.

In 1726, in supersession of the existing courts, Mayor's Courts were established in municipal towns like Madras, Bombay and Calcutta. By charters granted in 1730 and 1744 the exclusive privileges granted to the United Company were extended for further terms. The advance of loans to the state at a low rate of interest was the price exacted for the extension of privileges. Stringent provisions were passed against interlopers. An Act of 1754 laid down regulations for the Indian forces of the Company in order that they should be adequately strengthened. The charters of 1757-8 allowed the company any booty or territory which they might have acquired in their struggles with native powers.

§3 THE CONSTITUTION OF THE EAST INDIA COMPANY

There were two classes into which the members of the Company were divided. The larger class was known as the Court of Proprietors and consisted of all persons who held any amount of stock of the East India Company. Till the passing of Pitt's India Act, the proprietors, as being the body consisting of all shareholders who jointly owned the Company, were the final authority in the administrative organization of the Company. Their sanction was required for every important measure that may have been recommended by the Directors. Legislative power was entirely held by them. They passed all regulations and declared the amount of the dividend. Four meetings of the Court of Proprietors had to be held regularly during the year, extraordinary meetings being summoned when necessary.

The proprietors were not persons acquainted with or experienced in the active management of the business of the Company. They were not the Company's executive. They were interested more in the dividends that they hoped to receive on the capital they had invested than in the actual vicissitudes of the Company's complex operations. It was believed that this detachment engendered in them a sense of irresponsibility and a persistent tendency to demand increase of dividends year after year to the detriment of the general financial interests of the Company.

Attempts were made to regulate the voting powers of the proprietors from time to time, by fixing the possession of a certain minimum amount of stock as the necessary qualification for entitling a proprietor to have a vote. Such restricting proposals were made with a view to avoid irresponsibility and to guarantee that the voter who gave his vote or made any proposal did not do it out of mere frivolity. Hence the Act of 1784 rendered this body impotent by depriving it of the power that it formerly possessed, the power of revising and sanctioning the actions of the Directors. The proprietors thereafter continued only to receive whatever dividend was allotted to them, till the expiry of the Company. They ceased to have any influence as political or administrative factors in the Company's affairs after the year 1784.

The Court of Directors was the other and the more important body in the constitution of the East India Company. Originally, in the charter of Elizabeth, power was given to the proprietors or members to elect annually from among themselves twenty-four committees each consisting of a single individual. The twenty-four committees or individuals were, in fact, in sole practical charge of the affairs

of the Company and formed the executive machinery and directing brain.

It would appear that according to the original charter every member, without reference to the quantity of stock he held, was liable to be elected to the committees of the Directors. Election to the committees, or—which is the same thing—to the Directorate, soon came to be made dependent upon the amount of monetary interest that the individual desirous of being elected had in the business of the Company. { Thus the Act of 1689 fixed the possession of £2,000 stock as a necessary qualification for seeking election to the Directorate. } The number of Directors continued to be twenty-four till 1854, when it was reduced to eighteen, of whom six were to be nominated by the Crown. Finitely Directors were annually elected by the Court of Proprietors, but { by the Regulating Act their tenure was increased to four years } a quarter of their number being annually re-elected.

The Directors divided themselves into various committees so as to facilitate the disposal of their complex work by the introduction of the principle of division of labour. To each such committee were given important charges like those of political and military matters, finances, revenue, or judicial and legislative matters. There were, for instance, the Committee of Correspondence, the Committee of Law Suits, the Committee of Treasury, the Committee of Accounts, of Warehouses, etc. After questions had been submitted to the respective committees which had different jurisdictions, and after investigation and report by the committees on them, they were finally put before the whole Court of Directors for formal sanction. Pitt's India Act constituted a Committee of Secrecy of three members elected by the Directors from among themselves to carry on secret correspondence, orders, etc., between England and India.

The Directors had large patronage in their hands, practically every appointment in India being made by them. **Their patronage** Nomination to the Governor-General's post, however, necessarily required the sanction of the Home Government, as also to the posts of the Governor and the Commander-in-Chief. The various Acts that were passed between 1773 and 1853 left almost untouched this large patronage that it was the privilege of the Directors to enjoy. It was a lucrative privilege, the annual value of such patronage divided among the twenty-four Directors and the Governor and the Deputy-Governor being calculated at £15,000.

The Directors were the persons who made the Company. **Their powers** They managed the trade, kept the accounts and issued orders to the servants in India, dictating to them the part they should play in the tangled political situation of India in which they had to work. Their con-

sent was necessary for the declaration of war or ratification of peace. In short, every important matter of administration and all lines of policy to be adopted by the Company were discussed and disposed of by the combined council of the Directorate. The highest official in India, the Governor-General, had to carry out their mandates and often, in cases of difference between the absentee masters and the servants on the spot, the servants had to tender their resignations on account of the uncompromising and unsympathetic attitude of the Board of Directors. A huge mass of correspondence containing numberless dispatches, drafts, orders, minutes and *communiqués* passed to and fro between India and England and was the means by which the Directors exercised their superior authority.

Even after the creation of the Board of Control, though some of the powers of the Directors were diminished, the importance of this body in the constitution of the Company did not completely disappear. Only, in pursuance of the policy of progressive tightening up of the Crown's and Parliament's control over the Indian constitution, the Directors were given a somewhat subordinate position compared with the supreme independence that was formerly enjoyed by them.

The third agency in the constitution of the Company to **The Governor** which reference must be made was the Governor and the Deputy-Governor. The Elizabethan charter had authorized the annual election of a Governor by the members from among themselves. There were no restrictions in the beginning as to the kind of person who could stand for election. The charters of 1693-4, however, laid down that the Governor and the Deputy-Governor must have stock of £4,000.

The Governor was, of course, the chief executive official of the Company and must have been entrusted with the duty of seeing that all the wheels of the machinery of the Company's government were moving smoothly and unclogged. He does not, however, appear to have enjoyed any very special power more than the Directors, though he had a larger share in the patronage. The dovetailing of the various parts of the huge organization of the East India Company must have been, however, no mean task, and the efficient and easy dispatch of the mass of details incidental to such an institution must have required some ability and skill.

§4 THE FACTORIES AND PRESIDENCIES

The Company had to employ their own agents to collect **The factories** throughout the country the different articles of export from India. These goods, as also those that arrived in India in ships sailing from abroad had to be properly arranged and stocked. Special warehouses were erected for the purpose, so were counting houses near them. These, together

with the offices of the agents and the apartments for local business, constituted what was called a factory of the Company. During the days of disorder that prevailed after the death of Aurangzeb it became habitual for the Company to fortify these stations of trade and maintain in them contingents of professional soldiers.

It was not till 1612 that Thomas Aldworth was successful in establishing a permanent British factory, the first of its kind, in Surat, on the west coast of India, earlier attempts to do this having proved futile. During the course of the next few years subordinate agencies were set up in Ahmedabad, Godhra, Cambay, Burhanpur, Ajmer, and Agra. Factories were founded at Masulpatam and Pettapoli about 1616. In 1640 Fort St George was built on a piece of land secured from a Hindu Raja. That is modern Madras. It was raised to the rank of a Presidency in 1653. The important factory at Hooghly was established in 1651. Dacca and Patna soon followed. In 1686 the Company's agents and council quitted the factory at Hooghly for political reasons and retired to Sutanati (modern Calcutta), which became a recognized British centre after 1690, in which year Job Charnock 'definitely founded the capital of India'. Bombay was transferred by Charles II to the East India Company in 1688.

The three important factories of Bombay, Madras and Calcutta soon came to be described as Presidencies. Each of them was presided over by a President or Governor and Council, both appointed by commission of the Company. The number of Councillors generally varied between nine and twelve. They were superior Civil Servants and ordinarily seniority was the only test of promotion. The Governor and Council jointly possessed all administrative power. Members of Council were not prevented from holding subordinate functions. Very often therefore they distributed all the most lucrative offices among themselves.

The Governor or President exercised control over the Company's servants residing in the factory. He had to maintain discipline among the younger members. 'Fines were imposed for breaches of rules or misconduct such as drunkenness, dicing, brawling or insubordination.' The life in a factory corresponded to life in a club with a common mess, common prayers and common residence. Great dignity and importance attached to the President's office. He was usually appointed from England and received a salary of £500 per annum.

Below him were four or five Councillors who were senior merchants in the service. Still lower in status were the descending grades of merchants, factors and writers. Salaries for

each grade were fixed and promotion from one to another usually came by seniority. Besides the regular establishment there was a host of brokers hanging about the Company's residence. They were important persons. Through them alone could be conducted all the vast trade which it was the ambition of the East India Company to develop. The factories soon acquired the character and status of 'quasi-colonies'.

The business transacted by the Company's officials in India was purely commercial. The exports from England, the chief articles of which were bullion, lead, quicksilver, silver, woollen clothes and hardware, are stated to have stood at about £60,915 in 1708 and at about £92,281 per year during the next twenty years, excluding bullion, the average annual export of which came to nearly £442,350 during the same period. The chief imports into England from India consisted of calicoes and other woollen manufactures, raw silk, diamonds, tea, porcelain, pepper, drugs, etc. Their average annual value during 1708-30 has been calculated at £758,042 or thereabouts.

III THE GROWTH OF INDIAN ADMINISTRATION UNDER THE EAST INDIA COMPANY 1757-1858

§1 THE COMPANY'S WARS IN BENGAL

Disruption of the Mogul Empire DURING the reign of Aurangzeb 'which exhibited the premonitory signs that heralded the breakup of the Mogul Empire' the Company's factories on the west coast were harassed by Shivaji (1664 and 1670), who also threatened Madras in 1677. Shaista Khan, the Viceroy of Bengal, oppressed the factories in that province also. The Court of Directors, dominated by the aggressive Sir Joshua Child, determined about 1686 to abandon their traditional policy of peaceful commerce and to go in for active reprisals. They proclaimed their intention of establishing a polity of civil and military power—a 'large, well grounded, sure English dominion in India for all time to come'. Judged by the immediate results achieved these declarations appear ridiculous and in the nature of brave dreams.

European influences The days of disintegration following Aurangzeb's death, the rise of numerous independent potentates with conflicting interests, the attenuation of the central sovereign authority in Delhi, constant rivalry with other ambitious European traders, like the French, were circumstances which helped the Company to get themselves involved in wars and diplomatic negotiations with native princes. The War of the Austrian Succession and the Seven Years' War in which England and France fought on opposite sides, were utilized by the English and French factors in India as reasons for fighting against each other. In 1744 began the Carnatic Wars which ended in 1763. After suffering reverses in the earlier stages, the British power ultimately emerged triumphant. The profound schemes of Dupleix, Clive's defence of Arcot, the contest with Lally, the battle of Wandiwash, are events famous in the struggle. The material gain to the English Company was the acquisition of territorial sovereignty over the Northern Circars in 1760. French influence was completely destroyed.

Defeat of the Nabob of Bengal Events were moving fast also in Bengal. During the prosperous rule of distinguished Viceroys like Murshid Quli Khan and Ali Vardi Khan, comparatively peaceful relations were maintained between the European settlers and traders and representatives of the Muslim power. Cassimbazar, Dacca, Patna and Malda were the centres of British trade and British factories. With the accession of Siraj-ud-daula to the office of Nabob or Viceroy, quarrels and

recriminations commenced. They culminated in the battle of Plassey, in which the Nabob sustained a disastrous defeat involving loss of power and, later on, of life. Henceforth the Nabobs of Bengal became mere instruments in the hands of the Company who made and unmade them according to their convenience.

In 1757 Mir Jafar granted to the Company an area of 892 square miles known as the Twenty-Four parganas. **The Ceded Districts** The Company were recognized as the zamindar of this area paying an annual revenue of Rs. 2,22,958 to the Nabob or Nazim. This has been described as the first territorial acquisition of the Company in Bengal. The Nabobs had been humbled, and though sovereignty *de jure* rested with them and with the Emperor, the Company were the real masters of the situation. In 1760 Mir Kasim who displaced Mir Jafar conferred upon the Company the Districts of Burdwan, Midnapore and Chittagong, covering over 8,000 square miles. That was the price of his elevation to the Nabobship. The grant was confirmed by the Emperor in 1765.

The areas acquired in 1757 and 1760 are known as the Ceded Districts as distinguished from the Diwani land. In the case of the Ceded Districts all revenue belonged to the Company in their capacity as zamindar after the agreed dues to the State were paid. With Diwani lands it was otherwise. Here the Emperor was the master of the revenues and the Company were merely entrusted with the duty of collection and administration. In their own zamindari area the Company established their own collecting and administrative agency. In discharging their duties as Diwan various experiments were tried, including what is known as the Double Government of Lord Clive set up in 1765.

The battle of Buxar fought in 1764 was even more significant than the battle of Plassey. The latter was a successful skirmish against a mere viceroy of a province. Buxar on the other hand was a struggle against the titular head of the phantom of a mighty empire, assisted by his powerful subordinates like the Vazir of Oudh and the Nabob of Bengal. The Company's victory over Shah Alam raised them to a status of pre-eminence and a degree of power which they had never attained before. There was every temptation to exploit to the fullest extent the advantages proffered by the unique occasion.

§2 DIWANI AND CLIVE'S DOUBLE GOVERNMENT

As the victors in the battle of Buxar the Company were in a position to dictate their own terms of peace to the enemies whom they had so completely crippled. Each of the powers, the Vazir of Oudh, the Nabob of Bengal and the Emperor Shah

Alam, who had combined in an endeavour to destroy the Company's growing authority, was dealt with separately in three treaties that were made with them. Their new status and relation to the East India Company were clearly defined. It will be seen that the same degree of severity was not shown to every one of them.

The Company had no desire at this moment to deal drastically with the Vazir of Oudh even though they had defeated him. The only action that they took against him was to deprive him of the two districts of Korrah and Allahabad. Even these districts, snatched out of his possessions, were not retained by the Company for their own benefit. They were handed over to the Emperor Shah Alam who, theoretically speaking, could claim sovereign rights over them. Thus the Vazir's discomfiture in the battle of Buxar did not bring about his total ruin. He was merely put to the loss of two of his districts and a sum of money by way of indemnity.

The Nabob of Bengal stood in a different position. The battle of Buxar was not his 'first offence'. The Company had come into contact with him much earlier, and that contact had culminated in a collision on the field of Plassey. For over six years after the Nabob's signal defeat in that engagement he had been held almost in political bondage and subordination to the Company.

Thus even before the battle of Buxar a deputy or assistant to the Nabob, called Naib Subba or Naib Nazim, came to be appointed under the orders of the East India Company. Though nominally a subordinate, he was intended to exercise considerable restraint on the actions of the Nabob. In fact, if not in theory, he was the main active force which regulated the administration of the province. It was through his agency that the Company could easily influence and interfere with the affairs of the provincial government.

The audacity of the Nabob in rising once more against the East India Company and in joining in the inglorious struggle at Buxar was punished by his political extinction. The Company did not, indeed, take the extreme step of abolishing the Nabobship altogether. The office was maintained, but no real power or importance remained associated with it. The Nabobs were henceforward reduced to the status of powerless political pensioners.

It was stipulated in January 1765 that the Nabob should make over the management of the snbedari, with every advantage arising from it, to the Company by whom an annual pension of 50 lakhs, subject to the management of their nominees, was to be allowed to him. The duties of the Nizamat, that is, of maintaining peace and order in the province, were resigned by the Nabob to the

Company under this agreement. The responsibility for providing an adequate safeguard against internal lawlessness and encroachments on civic rights and liberties now passed from the Nabob to the East India Company.

The Company selected Mohammad Reza Khan for appointment to the office of Naib Subba. The powers of the Viceroy of Bengal were in practice enjoyed by this man though the Nabob continued to exist in name. And as the Naib Subba had now become entirely the creature of the Company, that body could effectively control all administration from behind the curtain whenever it desired to do so.

Negotiations with the Emperor Shah Alam were conducted **Treaty with the Emperor** with greater delicacy. He was not treated merely as a fallen and vanquished foe. Great consideration was shown to him on account of the exalted status and dignity which had been associated with his name. It was agreed that he should receive annually Rs. 26 lakhs out of the revenues of Bengal. He was further assigned the provinces of Korah and Allahabad out of the dominions of the Vazir of Oudh. (In return he was induced to issue under his royal insignia the finnan of the Diwan which conferred upon the Company the right of collection and administration of the revenues of Bengal, Bihar and Orissa, and the right of administering civil justice in those provinces. This momentous event took place in 1765. It is necessary to understand clearly the implications of this new acquisition secured by the Company.

In Muslim polity the Governor or Viceroy of a province was **The office of Diwan** known as the Subedar or Nabob-i-Nazim. He represented the Emperor in all matters civil or military. Sometimes Deputy-Governors or Naib Nazims were appointed to function for the Nazim who might be otherwise engaged. The office of Diwan was created by Akbar in 1579.

The Diwan was the finance minister of the province, responsible for the collection of the revenue, the expenditure of Government money and the dispensation of civil justice. He was not entirely subordinate to the Nazim and his appointment was made by the Emperor himself. However, in the province the Nazim had precedence and predominance as the head. Gradually Diwans began to grow in importance. The posts of the Nazim, who looked after general administration, and of the Diwan, who looked after finances, came to be combined in one person as in the case of Murshid Kuli Khan in 1713. The duality of the two offices disappeared and with it also the check of one upon the other. The succession to the office became hereditary in the absence of effective control from the Emperors of Delhi.

In August 1765 Clive revived the theoretical right of the Emperor to nominate a Diwan, and the office was conferred not

upon an individual but upon an institution, namely the East India Company. A distinct and exalted status was thus acquired by that body in the official hierarchy of the Mogul Court. It legalized their wielding of political power. The Company henceforth would not appear as mere mercenary foreign intruders. They were deliberately invested with the task of revenue collection in the three extensive provinces of Bengal, Bihar and Orissa, and with the administration of civil justice in them. One month after the Emperor's firman was issued, the Nazim or Nabob gave his recognition to the new Diwan.

It will be seen from this description that two separate contracts helped in establishing the *de facto* sovereignty of the East India Company in the province of Bengal after 1765.

(a) The earlier one was the treaty signed by the Nabob of Bengal after his humiliating surrender in the battle of Buxar. By that agreement the Nabob was deprived of his Nizamat responsibilities and powers, which were all taken over by the Company.

The Nizamat powers imposed the duty of maintaining an adequate police force for the security of life and property and enforcement of the law. They also included the obligation of maintaining efficient magisterial courts with wide jurisdiction in all kinds of criminal cases.

The way in which the Company began to exercise their newly acquired Nizamat powers was simple. They appointed their own nominee to hold the office of the Naib Nazim (or Naib Subba) and through him controlled all the lower officials. He was the chief instrument of their sovereign authority. The criminal administration of the province of Bengal was thus easily transferred into the Company's hands.

(b) The other contract was made with the Emperor in August 1765. By this agreement, the rights of Diwan over the province of Bengal were conferred upon the Company. Henceforward it became the duty of that body to make proper arrangements for the collection of land revenue in the province. They had also to maintain efficient civil courts with wide jurisdiction for the trial of all cases in which rights of property and inheritance were concerned. The civil administration of the province of Bengal was thus deliberately transferred into the Company's hands.

Once the Diwan was accepted, the problem was how the duties imposed by that office could be successfully discharged. On this matter again Lord Clive held strong views. He was convinced that the Company were not yet in a position to accept the *de facto* sovereignty in its entirety. They did not have a sufficient number of officers to fill all the higher administrative positions. The majority of

them were traders and merchants not adequately educated and certainly not specially fitted either by learning or by experience for the art of governance Nor were they distinguished by a reputation for that strong moral character necessary to resist the temptation of self-aggrandizement Also, the people who were to be governed were so different in language, laws, culture and general traditions

Lord Clive therefore thought it not only prudent but necessary

Clive's Double Government that the old indigenous machinery of government which had existed for centuries and with which the people were thoroughly acquainted, should be retained as before, though it was now to function under new masters He adopted the plan of retaining all old offices and even all old officers and entrusting to them their usual duties The Nabob's office was maintained though he had no power whatever Following the old practice a Naib Diwan was appointed The choice fell upon Mohammad Reza Khan who had already been selected to be the Naib Nazim imposed upon the Nabob Under the Naib Diwan there was the usual descending graduation of native officers

What happened theretore was this The rights of the collection of revenue and administration of civil justice were legally acquired by the Company However, it was not thought possible or advisable for that body to exercise those powers directly The old administrative structure, at the head of which stood the Naib Diwan, was maintained as it was The English did not begin the collection of revenues, but they began to see that they were collected The old mode of collection was left undisturbed All the complex principles and details of land revenue collection were to be observed as before The change was at the top, where the Nabob was replaced by the Company To this body were now transferred all the revenues of the provinces. This dual character of the system proposed by Lord Clive led to its description by historians as the Double Government

Clive's plan, though probably inevitable, was none the less

Its disastrous results disastrous, particularly because the Nizamat power of the Nabob, that is, the power of maintaining peace and order and administering criminal justice, have already been undermined The Nabob could no longer function as a corrective to the Diwan The Company, who had usurped the functions of the Nabob, satisfied themselves by conveniently imagining that the appointment of a Naib Subba was equivalent to providing an adequate and proper administration The Naib Subba, who was a creature of the East India Company, could not afford to displease his masters by taking judicial steps against English officers even when they were guilty of a breach of the law. The guardian of the public peace and justice, on account

of his impotence, was parodied into a dismal engine of oppression

Mohammad Reza Khan protested to the Calcutta Committee that 'English gentlemen and their gumashtras **Power divorced from responsibility** trade in linen, mustard seed, tobacco, oil, rice, hemp, wheat, in short, all kinds of grain and other commodities. They force their purchase money on the ryots. They do not pay customs duty to the Sircar but are guilty of all manner of seditious and injurious acts. They ruin everybody and reduce the villages to a state of desolation. Verelst, Sykes, Becher and other contemporaries, condemned in the severest terms the despotic actions of the Company's merchants who had lost all fear of control and responsibility. Nobody dared to exercise any authority against their lawlessness. The Indian agents employed by them arrogated to themselves a position of superiority, overawed the Nabob and his officers and converted tribunals of justice into instruments of cruelty. The Naib Diwan and his associates could appropriate treasures without being detected. So far as the protection of the subject was concerned all government was dissolved.

The disastrous consequences of Clive's Double Government made it necessary that some other method of government should be devised. In fact, during the next few years, a number of short-lived experiments were tried for reforming the administrative system. Some details about them have been given in Chapter XLI. It is only necessary to state here that all authorities agreed in considering this period to be the darkest in the annals of the East India Company's rule in India.

§3 PARLIAMENTARY INQUIRIES AND ENACTMENTS

Parliament's attention naturally came to be directed towards India after the momentous events which changed the Company's status in this unexpected and unprecedented manner. Stung by the exhilarating circumstances, the proprietors began to claim a larger dividend in spite of the Company's bad finances. Officials in the service of the Company returned home laden with huge fortunes. They further took the liberty of gratifying their sense of vanity by making a tangible display of their enviable but ill-acquired opulence. Reports of Parliamentary Committees appointed after 1769 made the calculation that from 1757 to 1766 the East India Company's servants received as presents from the people of Bengal a sum of not less than £2,169,665. Clive also received a jagir, the capitalized value of which would have worked out at about £600,000. In addition to this sum an amount of £3,770,833 had been paid as 'compensation for losses incurred'. Every servant was also engaged in private trade on his own

account and, by an abuse of the privileges granted to the Company, extorted large amounts from the poor customers

Considerable repugnance was excited by the spectacle of these English 'nabobs'. Their wealth was generally believed to have been amassed by barbarous and disreputable methods and to be tainted with tyrannical corruption. Lovers of liberty like Burke made spirited attacks upon the immoral system which could produce such unscrupulous specimens of administrators. William Pitt described the 'rapacity, plunder and extortion' of the officers as being 'shocking to the feelings of humanity and disgraceful to the national character'. The question began to agitate the English public as to whether a trading corporation should be allowed to have territorial sovereignty at all.

Parliament therefore appointed a Committee in 1766 to inquire into all these matters and make a report on the state of the Company's revenues and other affairs. In the following year, 1767, Parliament passed five Acts. These prevented the proprietors from taking dividends larger than ten per cent and compelled the Company to pay £400,000 a year to the Treasury for two years, in return for permission to retain their territorial sovereignty. The contract was renewed for a further term of five years in 1769, the Company undertaking to make the stipulated annual payments in return for the permission to retain their possessions.

The assumption, however, on which such an arrangement was based, that the Company's finances were extremely prosperous, was thoroughly groundless. While the servants of the Company were amassing colossal fortunes, the Company themselves were advancing rapidly towards bankruptcy. Their 'debts' amounted to about £6,000,000. They maintained a large standing army. Their political expenses continued to be heavy. Hyder Ali's victory in the Carnatic in 1769 and the disastrous famine in the north in 1770 precipitated the crisis. The Directors approached Lord North begging for a loan from Government, which alone could save the company.

In 1772 Parliament appointed a Committee with instructions to hold a secret inquiry into the affairs of the Company. The Company's request for pecuniary assistance came before Parliament in 1773, and Lord North's Government proposed extensive alterations in the system of the government of the Company's Indian possessions. Two Acts were passed by Parliament. By one, a loan of £1,400,000 at four per cent was granted to the Company, on whose power of declaring dividends some restrictions were also imposed. They were obliged to submit their accounts every half year to the Treasury.

The second Act of this year is the famous Regulating Act,

the provisions of which have been discussed elsewhere. This **The Regulating Act 1773** is the first Parliamentary enactment which tried to modify the Company's administration in India. The era of Charters now gives place to the era of Parliamentary Acts. Henceforth a series of statutes were passed, usually each at an interval of twenty years, when the time came for the renewal of the Company's Charter. On each such occasion the authority of the Crown and Parliament was tightened and the Company themselves were ultimately transformed from a trading corporation into an administrative agency.

The Regulating Act took the first steps in setting up a unified system of administration for the whole of British India. A Governor-General was appointed to superintend and control the governments of the three presidencies. He was given the assistance of an Executive Council. A supreme Court of Judicature, independent of the executive, was also established. The main skeleton of the present Indian Government can be said to have been originally provided by this important statute.¹

The Amending Act of 1781 settled some of the disputed **Pitt's India Act, 1784** questions, particularly that about the jurisdiction of the Supreme Court established under the Regulating Act of 1773. It was, however, Pitt's India Act of 1784 which placed the Company in direct and permanent subordination to a body representing the British Government. It created a Board of six Commissioners for the affairs of India, popularly known as the Board of Control. The Board was to consist of the Chancellor and one of the Secretaries of State and four Privy Councillors nominated by the Crown to hold office during its pleasure, but it was never intended that high officers like the Chancellor or the Secretary of State should take any active part. The Commissioners were unpaid and had no patronage. They were empowered to superintend, direct and control all Acts regarding the civil and military administration of the Company's possessions in India. They were given access to and control over all papers, minutes, dispatches, orders, etc. The Directors had to give obedience to the Board, which might disapprove of or modify the dispatches of the Directors. The Court of Proprietors lost its chief governing power. It could not revoke or modify the proceedings of the Court of Directors.

The importance of Pitt's measure therefore lies in its creation **Importance of the measure** of a separate Department of State in England under the official style of 'The Commissioners for the Affairs of India', whose special function was to control the Court of Directors. One of the Commissioners was appointed President, having a casting vote in matters of difference. He

¹ For a detailed account of this and other Acts passed by Parliament see Chapters XLV and XLVI.

later on came to be popularly known as the President of the Board of Control, and practically exercised all the power vested in the Board and acquired a position of supremacy. A Committee of Secrecy of not more than three members was to be formed out of the Directors. Secret orders to India dispatched by the Board were to be transmitted by this body. The Act thus inaugurated what is described as Double Government in the Indian administration. The Company's officers continued to be in actual charge of the management, while the representatives of Parliament, sitting in a separate body, controlled all important matters of policy and detail from day to day.

By the Act of 1793, the two junior members of the Board of Control were no longer required to be Privy Councillors. Provision was also made for payment of salaries to the members and staff of the Board out of Indian revenues.

Measures of some importance were passed between 1793 and 1813 but they need not be described here.

The Act of 1813 was preceded by a searching inquiry into Indian affairs. Wellesley's vigorous policy had affected the finances of the Company and a Parliamentary Committee sat for four years from 1808 onwards to make inquiries. In 1812 it issued the famous Fifth Report which is stated by Ilbert to be still a standard authority on the question of Indian land tenures and on the judicial and police arrangements of the time. Napoleon had closed the European ports, and British trade demanded admission to Asiatic ports. The Company fought hard to retain their privilege and put forth various arguments against the opening of the doors of the east to all and sundry. Their opposition was, however, ignored and the proposals submitted by the Government were embodied in thirteen resolutions, on which was based the later Act. Parliament's interference now covered not only the internal administration of Indian affairs but it reduced the Company's trade monopoly itself, confining it to the article of tea in their trade with India. Parliament's undisputed sovereignty and discretion to introduce any alterations in the Company's constitution or privileges were once more demonstrated.

Twenty years later, careful inquiries were again instituted when the time came for the renewal of the Company's Charter. The Company were now compelled to close their commercial business and they ceased to be a mercantile corporation. They were indeed given a further lease of life for twenty years, but they became henceforth strictly an administrative machine, conducted by the Directors and controlled by the Board of Control as representing Parliament. The Act added a separate Law Member to the Executive Council of the Governor-General, and introduced a highly centralized system of administration.

The Act of 1853 renewed the Charter of the Company, but **The Act of 1853** not for a definite number of years. The Indian dominions were to remain in the hands of the Company in trust for the Crown until Parliament should otherwise direct. The number of Directors was also reduced from twenty-four to eighteen, out of whom six were to be appointed by the Crown.

Finally the Mutiny of 1857 gave the death-blow to the existence of the East India Company. **The Act of 1858** the Better Government of India enacted that India should be governed by and in the name of the Queen, and vested in the Queen all powers and territories that had belonged to the East India Company. A Secretary of State with Council was appointed to transact the affairs of India in England.

§4 PARLIAMENTARY CONTROL OVER INDIAN AFFAIRS

It will be clear from this short survey of the growth of the East India Company's political organization, consequent upon the territorial expansion of their power in India, that the Company in the nature of the circumstances had two different sets of officials to transact their business, one in India and the other in England. England was the country of the Company's domicile. From it were derived all their power and privileges. The chief controlling and directing authority of the Company's affairs resided in England and functioned from there. The Company being originally a commercial corporation, their constitution was modelled on the lines of such a body.

It is interesting to understand how the Parliament of England exercised its sovereign control over the affairs of the Company so as to modify their Indian policy in general during the period under survey, 1600 to 1857. It is evident that occasions for interference did not arise frequently in the earlier years when the Company were almost a purely commercial corporation. The business of the Company during these years had not reached that intricate character which it acquired during the later years of its development. The Company were the creation of the English monarch who had endowed them with a legal existence through the instrumentality of a Royal Charter.

Very definite conditions as to the privileges, the constitution and the powers of the Company were mentioned **i. The issuing of Charters** in these documents, and any transgression of the limits and restrictions imposed upon the Company was liable to lead to the penalty of the dissolution of the whole body. In the technical sense of the term, the East India Company were

at no time sovereign. Their powers and privileges, even when great and undefined, were all derivative. And whenever circumstances in India made it necessary to hold new powers, request for the grant of such powers had to be made to the Crown which would then incorporate them in a new Charter.

Thus successive monarchs made additions to the powers and privileges of the Company in response to changing environment and on an appeal from the Directors. Such measures appeared with great frequency and sometimes at short intervals during the century and a half following the grant of the original Charter of 1600. The increase in powers was often accompanied by detailed regulation about some section of the administration. The establishment of some sort of judicial system for the trial of civil and criminal cases, the establishment of Municipal Corporations in the important cities in the Company's dominions in India, and the constant alteration and determination of the franchise for entitling a person to be a Proprietor having a vote, or to be a Director, or a Governor of the Company, were matters which were regulated by the conditions of the Charters.

It will be seen, therefore, that though the authority of the Crown was not directly exercised over the affairs of the Company, to which certain rights of sovereignty were delegated as a privilege to be enjoyed under certain restrictions, the fact that the delegation depended entirely upon the will of the reigning monarch, who might or might not grant it, put a restraint upon the actions of the Company and the freedom of their existence. Legally they did not enjoy immunity from superior control.

The control of the Crown did not, however, necessarily mean the control of Parliament. The battle for civic rights and liberty which the citizens of England successfully fought with their monarchs during the period of the Stuarts had only given faint indications of its coming when Elizabeth granted the Charter which incorporated the East India Company in 1600. At the time of the Revolution of 1688 and even earlier, the right of the monarchs to grant a monopoly through the instrument of a Royal Charter was hotly disputed and was, in the end, emphatically denied. The resolution of Parliament in 1693, to which a reference has already been made, declaring the equal right of all subjects to trade in the east, was a reply to the legal claim made on behalf of the beneficiaries of the Royal Charters. With this definite shifting of the centre of political gravity from the King to Parliament and the acknowledgement of Parliament's undisputed claim, the Charters which were the foundations and the props of institutions like the East India Company began to be issued with the consent and in the name of Parliament. For the monarchs were substituted the people. The source of authority was

changed, though the form in which power was delegated and control was exercised remained the same

With the growing complication in the Company's^o Indian affairs arising out of their entanglement in the disturbed politics of the land, and with the assumption by the Company of the *de facto*, if not *de jure*, territorial sovereignty of the vast area comprised by the provinces of Bengal, Bihar and Orissa, the nature of Parliamentary control had to be adjusted to suit the requirements of the new situation. The question had to be decided whether a commercial corporation could be permitted to exercise territorial sovereignty, whether such influence would be beneficial to the people over whom it was exercised or by whom it was exercised. The constitutional maxim that no subject can acquire sovereign rights except for the Crown also made it obligatory that Parliament should investigate very critically the operations of an institution which had become deeply involved in politics and military adventures.

From the acceptance of the Diwani in 1765 and onwards, members of Parliament grew more curious about Indian affairs, and their leaders felt a greater responsibility in respect of Parliament's supervision over the Company's administration. The most usual method of exercising this supervision was the appointment of Parliamentary Committees to conduct detailed investigations into Indian affairs from time to time. Investigations of this kind preceded the Regulating Act, the Act of 1813, the Act of 1833, and so on. Sometimes the inquiry was held secretly and every endeavour was made to thrash out all details and thoroughly understand the circumstances of the Company's management and rule. Voluminous documents were later on published recording the evidence collected by such Committees.

On receiving the Reports the minister in charge in England embodied such of their recommendations as were acceptable to it, in definite proposals for an Act, and put the Act before Parliament for discussion and sanction. Between 1773 and 1858 a number of such Acts modifying, altering and regulating the administration of the Company's Indian dominions were passed by Parliament. The time for the consideration of the Indian question invariably arose when the legal period for the currency of the Charter, on which the very existence of the Company depended, was about to terminate. From 1773 to 1853 at an interval of every twenty years, Parliament had necessarily to legislate on Indian matters. At such times it took the opportunity of reviewing the whole situation and adjusting its legislation to the needs of the administration. Even during the intervals it took the initiative in introducing measures affecting India in order to correct any defects which required urgent attention. Thus the Amending Act of

1781 was passed only seven years after the Regulating Act, and Pitt's India Act only three years after the Act of 1781. The Acts went into the details of the administration and circumscribed the freedom of the Company in the management of their internal affairs, to the extent to which these had to be carried on in accordance with the prescribed Parliamentary rules.

But the most effective instrument by which the Home Government exercised its supreme control over the Company's affairs over and above the appointment of Parliamentary Committees and the enacting of laws, was the creation of a regular Parliamentary agency which worked as a normal department of Government for the day-to-day supervision and guidance of the Company's affairs both in India and in England. Committees of investigation and Acts of Parliament came sporadically at intervals of years. Their control, therefore, could not have the continuity that is secured by a permanent department. Steps were taken to institute such a standing superintending authority by Pitt's India Act of 1784.

The Board of six Commissioners which came later on to be known as the Board of Control was nothing less than the superimposition upon the officials of the Company of a board of masters, who were empowered 'to superintend, direct and control all acts regarding the civil and military government of Indian territories'. They were given access to all papers, dispatches and documents. The Directors of the Company had 'to pay obedience to, and had to be bound by the orders of the Board, which might modify any communications or dispatches issued by them'.

It will be seen at once that the formation of an authority with such vast superior powers inevitably degraded the officers of the Company to a subordinate position. They lost their power, independence and initiative. A Committee of secrecy of three, formed from among the Directors, was alone entrusted with the examination and dispatch of important political and military documents. The degradation of the Directorate body as a whole was therefore considerable. The six Commissioners were to be named by the Crown.

The President of the Board of Control was almost always a member of the Cabinet and the appointment soon came to be recognized to be a party appointment. The President went out of office and came into office according to the fortunes of his political party. In course of time the number of members of the Board was reduced to one. He continued, however, to be known as the President. Provision had been made since 1793 for the payment of the salaries of the members out of Indian revenues.

The President of the Board had enormous influence over the administration. He was the representative of Parliament and

its constitutional adviser on questions connected with India. With the support of that august body behind him, he could make and unmake important decisions regarding the Indian Government. The fear that he might deprive the Directors of their lucrative patronage by persuading Parliament to abolish their powers tended to make the Directors subservient to his will.

Private discussions between the Chairman of the Directors and the President of the Board soon became a normal preliminary to the disposal of the vast amount of correspondence that passed in ship-loads between England and India. The practice also gradually arose of private communications between the President of the Board on the one hand and important officials in India like the Governor-General and Governors on the other. By this unofficial means the President's opinion on particular questions and the general trend of his thought could be ascertained before any action was taken in India.

The system of government which was thus inaugurated by the Act of 1784 has been described by writers on **Double Government** the Indian constitution as Double Government (not to be confounded with Clive's Double Government mentioned earlier). As the President had Cabinet status and as his office had no fixed tenure but changed with his party, Parliament was able, if it so intended, to exercise complete and direct control over Indian administration because of the complete responsibility of the British Cabinet to the British Parliament and the consequent responsibility of the President of the Board to the members of that body.

It is true, however, that as the President's salary was paid out of the Indian exchequer and had not to be voted by Parliament, there was no routine occasion on which Parliament would have the necessity to consider the Indian question. It was not so with the other members, of the Cabinet and departments controlled by them. Discussion necessarily arose on matters in their departments when, at the beginning of the year, demands were made for salaries, and other expenses.

In short, Charters, Enactments, Committees of Inquiry and the Board of Control were the instruments by which the Government of England exercised its control over and supervised the administration of the East India Company's territorial possessions in India.

IV. THE POLICY OF ASSOCIATION AND THE MORLEY-MINTO REFORMS 1861-1909

§1 THE RISE OF INDIAN NATIONALISM

THERE was one remarkable gap in all the legislation that was passed by Parliament prior to the year 1861. **No mention of India's political rights** of its Acts contained any reference to the political rights or status of the Indian people. The millions who were governed were not considered sufficiently important to deserve specific recognition at the hands of the parliamentary legislator, and were ignored in the scheme of the Indian constitutional structure.

By the year 1861, the conquest of India was complete. What **Policy of conciliation** was more important, the new order was accepted, more or less, as an accomplished fact by the majority of Indians. They appeared to have bowed to the inevitable. The defiant and standing challenge of the vanquished to the supremacy of the victor gradually calmed down to an inaudible murmur of protest. A spirit of resignation and acquiescence seemed to pervade the whole land.

A generous gesture from the conqueror at this psychological moment was bound to produce a very soothing effect. The edge of hostility could be softened by a display of friendliness and sympathy. It was also necessary that the rulers should be fully acquainted with the trend of opinion among the subjects of the country. The old Indian methods of ascertaining what the people felt and thought had become rather crude and out of date. Nor could they be properly assimilated and employed by a foreign bureaucracy.

There was another factor of great importance. After the **Results of western education** advent of British rule, and more particularly after Macaulay's famous Minute of 1834, the doors of western education were thrown open in India. Important centres of modern learning, like colleges and universities, were started in several provinces. They gradually unfolded an entirely new world before the eager eyes of the dispirited Indian. It was an exhilarating picture, depicting a type of moral and material glory which was new to India.

The ideals embodied and inculcated in the new learning were appreciably different from what the Indian had been accustomed to respect in the past. The inventions of the physical sciences were an astounding but pleasing novelty. They brought visions of earthly happiness and comfort. The social sciences also exhibited a striking growth. They began to pro-

pound dogmas which had hitherto been almost completely unknown. Their interpretation and solution of the problem of human inequality became more emphatically rationalistic and fearless.

The history of western countries had also its own inspiring message to a fallen nation. The romantic stories of the struggle for popular freedom in nations like England, France and America caused deep stirrings of the soul in a politically degraded people. Liberty, equality and democracy became the most vital elements in the new ideology. The spread of those doctrines gave a new orientation to social and political thought in India. It supplied a new sense of values for judging human institutions and human relations.

In the light that was thus cast by western literature and philosophy, the Indian began to discover himself. He regained his self-consciousness and recovered his sensibility. An intellectual unrest soon began to be visible in many parts of the country. The formation of the Indian National Congress in 1885 was the climax of the growing internal awakening. The Congress expressed and focussed Indian discontent against the existing conditions. The Indian Renaissance eloquently manifested itself through its impressive medium.

§2 ADOPTION OF THE POLICY OF ASSOCIATION

Parliament had to take cognizance of this psychological transition. Its attitude had to be adjusted to the new situation. This did not mean giving countenance to the Indian demand for self-government which soon came to be vigorously put forward by the Indian leaders. In fact, such a notion was summarily rejected. Even Lord Morley, who had the reputation of being a left-wing liberal in his day, could not imagine the possibility of parliamentary institutions being conferred upon India. It was felt by the Englishman that India was still for democratic policy. To speak of parliamentary apparatus as being either demanded by or conceded to such a backward country was held to be an absurdity.

But the denial of self-government did not make it necessary to withhold lesser concessions. The Indian might not be entrusted with power over Indian administration, but he could be brought into closer touch with its routine. He might not be allowed to determine governmental policy, but his opinions on some of its simpler aspects could be invited. Explanations and replies could be officially given to points raised in his criticism. A common ground could be created on which the official and the non-official could meet more frequently and influence each other. In short, a small fraction of the Indian

public could be associated fairly closely with the administration of the country.

The policy of association was thus a very much milder affair than the introduction of a responsible, and democratic government. It involved the creation and the multiplication of contacts between the rulers and their subjects, but not the transfer of political power to the Indian people. The main feature of the policy was the formation of legislative councils which contained a small number of non-official Indians. At a later stage, Indians also came to be appointed to a few high offices including membership of the central and provincial executive councils.

To be a member of a legislative council appealed both to the head and the heart of Indians. It was a new opportunity to interpret the popular will and to explain the popular viewpoint. The councils gave scope both for the satisfaction of personal ambition and for the ventilation of public grievances. They served as a political training ground, and provided a medium for the lawful expression of discontent against the actions of the Government.

It may be said that three important Acts were passed by Parliament in furtherance of the policy of association. The Act of 1861 introduced legislatures of the new type and made room in them for a small nominated non-official element. No change was made in this arrangement for thirty years, after which period another Act was passed in 1892. This measure increased the scope of the legislature's activities and strengthened the non-official element by inaugurating, in an indirect manner, the principle of election. However, it is the Act of 1909 which may be considered as a well-developed product of the policy of association. The Morley-Minto Reforms which were embodied in this measure are a landmark in the history of Indian administration in pre-War days.

3 CRITICISM OF THE POLICY OF ASSOCIATION

The policy of association was too meagre and inadequate to satisfy the political aspiration of India. From the Indian point of view it had grave limitations and defects. The legislative council was merely an expansion of the executive council. Additional members were added to the latter when the enactment of laws was contemplated. The central legislature and most of the provincial legislatures contained a clear majority of official members even after the Morley-Minto Reforms of 1909. The lawmaking chamber had therefore no independent existence. It was merely an instrument in the hands of the executive.

authority and not a restraint on its powers and actions. It could not serve as a real check on an irresponsible government.

The structure of the legislative councils was extremely unsatisfactory and defective. Till the Act of 1892 **Their structure was defective** they did not contain a single elected member. It was not the choice of the people but selection by a foreign bureaucracy that made the Indian legislator. His representative character therefore suffered from a fundamental deficiency. The Act of 1909 admitted the principle of election, but the total number of elected representatives that it provided for all legislatures in India put together came to the miserably small figure of 135, which was not adequate to serve the democratic purpose of voicing and reflecting all the currents of popular opinion. The method of election was also extremely faulty.

The powers conferred on these bodies were very limited and **Their powers were inadequate** ineffective. All laws required their sanction, but on account of the standing official majority it was impossible for any measure proposed by the Government to be rejected. The right of asking questions and moving resolutions was extremely restricted. The council could discuss the budget to a certain extent, and even divide the house on some motions that were allowed on it. But in the nature of things no division could actually go against the Government. In addition, not a rupee of the income or of the expenditure of the central or provincial governments was placed under the direct control of the legislature.

The Morley-Minto Reforms were hailed by some influential **Limitations of the Morley-Minto Reforms** leaders, both in India and in England, as a considerable contribution to India's political advance. Great hopes were entertained about the new regime initiated by them. However, practical experience soon showed that the only net gain of those reforms was a little latitude to the non-official Indian to express his disapproval of some aspects of the Government's policy, and also to make a few constructive suggestions. But the very exercise of those privileges was distasteful to the elected members because there was no obligation upon the Government to accept even very modest proposals and criticisms. They often proved to be only a cry in the wilderness.

Those who were optimistically looking forward to the establishment of at least some degree of popular control over the Indian administration were therefore **Disappointment caused by them** disillusioned. It was realized that the totality of the legislature's powers amounted to little more than the dubious privilege of an occasional and inconsequential debate on a few public questions. And that too depended upon the Government's pleasure. The parliamentary garb of the legislative councils was not only deceptive but ridiculous because the

bureaucratic government commanded a clear majority of the votes. There was an air of unreality about the proceedings. Even sober-minded politicians confessed to a sense of overwhelming futility in working such a poor sham for representative democracy

V. THE MONTAGU-CHELMSFORD REFORMS AND THE BEGINNINGS OF RESPONSIBLE GOVERNMENT 1919

§1 THE GREAT WAR AND INDIA'S SERVICES

WITHIN five years of the passing of the Act of 1909, an unexpected **Outbreak of the Great War** and overwhelming catastrophe descended upon the world. The Great War broke out in 1914, and every phase of national and international life was profoundly influenced by the convulsive forces that were unchained. A revolutionary social philosophy swept away the older ideals and also those individuals and institutions which typified and embodied them.

As a member of the British Empire, India was called upon **Services rendered by India** to fight on the side of the Allies. The response was quick and enthusiastic. All the resources of the country were placed at the disposal of the British Government. India's contribution to the War in men, material and money was remarkably generous. The great magnitude of her gifts and the unswerving loyalty of her people created a profound impression on the British nation. Admiration and gratitude were universally expressed for the spirit of friendly co-operation that was displayed by Indians.

The Great War was described by the Allies as a sort of crusade **Threat to civilization** against injustice, wrong and tyranny. It was said to have been provoked by a grave menace to human civilization. The right of the smaller and weaker nations to exist had been challenged. National honour and integrity had been violated. Liberty, equality and democracy, which constitute the essence of civilized existence, were threatened with ruin.

England and her Allies claimed that their entry into a horrible **Ideals of the Allies** war was not instigated by selfish motives. They claimed to be pursuing a noble ideal even at a tremendous sacrifice. ~~Everything that was good and pure in human life had to be saved from destruction. All forms of unnatural coercion and slavery had to be abolished.~~ The moral implications of the Allied mission were expressively epitomized in the single word 'self-determination'. With that inspiring slogan on their lips, warriors and statesmen bravely set out to renovate a world in ruins.

India was also participating enthusiastically in the campaign. Her soldiers were laying down their lives in defence of the freedom of other nations, yet her own political status was far from satisfactory. She was a mere dependency, held in the

grip of a powerful foreign nation. The right of self-government was emphatically denied to her citizens. A country which was called upon to dedicate men and money for the emancipation of mankind was itself compelled to be in political and economic bondage. The anomaly was glaring.

§2 THE ANNOUNCEMENT OF 20 AUGUST 1917

A vigorous agitation was naturally started in India for the assertion of her legitimate claims to internal freedom, or Home Rule. England could no longer refuse to entertain them. To do so would have been inconsistent with her altruistic professions. Nor could the substantial war services of India be lightly ignored. This combination of circumstances induced a healthy change in the Englishman's attitude towards the Indian demand. The Indian public had been long insisting that the final goal of British policy in India should be clearly defined. But it required the shock of a devastating war to induce the British Parliament to comply with the Indian demand. On 20 August 1917, the Secretary of State for India made a momentous declaration on behalf of the British Government. ✓

The following important extracts will explain the nature of the ideal as contemplated in the announcement. **Mr Montagu's announcement** : 'The policy of His Majesty's Government is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. The progress in this policy can only be achieved by successive stages. The British Government and the Government of India must be the judges of the time and the measure of each advance.'

It will be seen that Parliament did not propose to introduce immediately any sweeping change in the method of Indian governance. The mechanism of bureaucratic control was not to be suddenly transformed into responsible government. The process was to be gradual and its tempo was to be properly regulated. In fact to the Indian mind the parliamentary definition of India's political destiny appeared to be disfigured by many conditional and restrictive clauses.

However, in spite of these defects, the announcement was a landmark in the history of the British administration in India. It signifies a new constitutional era. **Principle of responsibility accepted** For generations together, the Englishman had put his faith in the efficacy and sufficiency of the policy of association. He sought to provide an effective, even a paternal, gov-

ernment for the Indian people. But he had not acquiesced in the concept of government by the Indian people. New for the first time it was decided that the Indian was to be allowed to wield political power in his own right. He was to be given an opportunity to taste the pleasures and the responsibilities of parliamentary practice. The formation of responsible ministries was to be a new feature of Indian administration. The subordination of the Indian executive to the Indian legislature was no longer ruled out as an impracticable ambition.

Another important decision was also announced at this time.

The Secretary of State visits India / The Secretary of State for India was asked to pay a special visit to India and to make personal inquiries concerning its constitutional future. The Indian problem appeared to be complicated and therefore incapable of a ready solution. The Government of India had to be consulted at every stage. A full and frank exchange of views between Indian leaders and Parliament's representative was also considered to be very desirable. It was expected to be immensely helpful in clarifying the issues.

§8 THE MONTAGU-CHELMSFORD REPORT AND THE ACT OF 1919

The Montford Report and the Act of 1919 Mr Montagu, the Secretary of State, arrived in India in the winter of 1917 and stayed in the country till May 1918. In company with the Viceroy, Lord Chelmsford, he visited important cities like Bombay, Madras, Calcutta and Delhi. Evidence was invited from individuals and associations. Numerous interviews were granted and deputations were received. The tangible result of the investigations and of the collaboration of these two authorities was the famous document which is popularly known after its writers as the Montagu-Chelmsford (or Montford) Report. [It contained a brief historical survey of the Indian administrative system and a lucid exposition of its growth.] Then followed a discussion of the different proposals for reforming the existing system. The authors also put forward a series of recommendations of their own for acceptance by Parliament. The publication of this historic Report was followed by the drafting of a Bill, its reference to a Joint Parliamentary Committee, and its final passage into an Act in 1919. The new scheme actually began working in the beginning of 1921.

This Act was an attempt to implement the promise contained in the declaration of 20 August 1917. It was essentially a measure which created, and served the needs of, a transitional period. The purely bureaucratic system was to be modified but not to be wholly abolished. The principle of political responsibility was to be definitely intro-

duced, but the extent and the scope of its action were to be limited. The Indian constitution was to be cut from its old moorings, but the final destination of responsible government was to be reached only after several intermediate stages had been slowly passed.

The Montford reforms were the earliest of these halting points. The changes brought about by their provisions inevitably resulted in the formation of a hybrid structure. An irresponsible executive was partially placed at the mercy of a popular legislature. Bureaucracy and democracy were strangely mixed up and closely associated with each other. It was an unnatural juxtaposition of contraries which was bound to produce friction. In fact, the consequences were clearly foreseen and special means were provided to remove the difficulties that were inherent in the working of such an odd combination. The Act of 1919 embodied all the peculiarities and imperfections that belong to a stage of transition.

There were three main concepts on which the new scheme was based. First, the central and provincial spheres were demarcated and distinguished from each other with greater clarity and precision. A larger measure of independence was granted to the provinces. The list of central subjects contained items which required uniformity of policy and control throughout India. The list of provincial subjects contained items in which freedom and initiative could with advantage be left to local authorities.

Secondly, the province was considered to be the most suitable unit for beginning the experiment of self-government. The provincial subjects were divided into two groups. The Reserved half was to be administered by an irremovable executive council as before. But the Transferred half was given for management to a new class of officials called Ministers. They were selected from among the elected members of the provincial legislative council and were made fully responsible to that chamber for their actions and policy. The legislative councils themselves were greatly enlarged in size and were provided with a substantial majority of elected members. The franchise for their election was considerably lowered. A part of the provincial budget was placed under their control.

Thirdly, an attempt was made to give a more effective voice to the public in the conduct of the Central Government, though no element of responsibility was introduced in this sphere. The number of Indians in the executive council was increased to three. The central legislature was also constituted on a more democratic basis. It was given the bicameral shape. The upper house was indeed extremely oligarchical in character and retrograde in its outlook. But the lower house was expected to be more representative.

of Indian political talent. A wider franchise was prescribed for its election. A part of the central budget was made subject to its vote—an important innovation. The Legislative Assembly was given many opportunities to expose and criticize the attitude of the central executive.

VI. CIRCUMSTANCES WHICH LED TO THE ACT OF 1935

§1 EVENTS BETWEEN 1919 AND 1930

THE introduction of the Montford reforms synchronized with **Discontent in India** a very inauspicious combination of circumstances. The obnoxious Rowlatt Act was passed by the Government of India in the teeth of popular opposition. It was followed by the proclamation of martial law in the Punjab and the dismal Jallianwalla Bagh tragedy. The Muslim public was also considerably agitated over the settlement of the Khulafat question. The discontent roused by the Act of 1919 was naturally aggravated in such an atmosphere of irritation and anger. In fact, all this varied disaffection produced a cumulative effect. It contributed to the rise of a mighty political ferment which found vigorous expression in the Non-co-operation movement started by Mahatma Gandhi in 1920.

The Reforms Act was denounced by nationalist opinion in **The reforms denounced** India as being inadequate, unsatisfactory and disappointing. Even the first Legislative Assembly, which was composed entirely of moderates and liberals,¹ passed a resolution as early as September 1921 demanding an immediate revision of the new constitution. Three years later, some prominent leaders of the Congress entered the legislatures, and under the able guidance of Pandit Motilal Nehru the Legislative Assembly passed an important resolution. It urged the Government to convene a Round Table Conference of Indians and Englishmen to formulate a scheme of responsible government for India.

The Government then appointed a committee under the **The Muddiman Committee** presidency of Sir Alexander Muddiman to inquire into the working of the reforms. Its report was not unanimous. The minority was composed of influential Indians who had actually worked the reforms and could therefore speak from personal experience about them. In a valuable minute of dissent they pointed out the defects inherent in the mechanism of dyarchy and unequivocally condemned the whole scheme. On the other hand, the majority, which included Government officials, made certain minor suggestions for improving the working of the system. The Government tabled a resolution in the Assembly for the consideration of these suggestions. The leader of the Swaraj party moved an amendment

¹ The Indian National Congress, which represents advanced Indian political opinion, had decided to boycott the Montford Reforms and had not contested elections to the new legislatures.

to that resolution, reiterating the necessity of holding a Round Table Conference. The amendment was carried against the Government.

The Act of 1919 had provided for the appointment of a **The Simon Commission** Statutory Commission at the end of ten years after it was passed. The Commission was intended to make inquiries into the system of government, the growth of education, and the growth of responsible institutions in India, and to recommend an extension, modification, or restriction of responsible government. Ordinarily, it would have been appointed round about the year 1930. But, apparently in response to the Indian agitation, His Majesty's Government decided to anticipate that date. In November 1927 they made the announcement that a Statutory Commission under the presidency of Sir John Simon would be immediately sent out to India.

Unfortunately, a step which was intended to appease and to **Its boycott** pacify Indian unrest only succeeded in producing the contrary result, and alienated and embittered Indian feeling to even a greater extent than before. Parliament thought it proper not to include a single Indian in the personnel of a Commission which was specially asked to investigate into and to sit in judgement upon the political aptitudes, achievements and aspirations of India. This exclusion was humiliating to Indian self-respect and was keenly resented. The Simon Commission was boycotted even by the Indian Liberals. Its Report, which was published in 1930, was received with a chorus of condemnation.

In the meantime, there was a change of government in **The Labour Government** England. The Labour Party was established in office if not in power. Great expectations were raised in India on account of its advent because it had frequently professed sympathy with Indian ambitions. The Labour Ministry soon decided that a Round Table Conference should be convened to discuss the constitutional future of India. Indian leaders were invited to participate in its deliberations and to help in the framing of a suitable constitutional structure.

However, this decision did not convey the clear assurance **The civil Disobedience Movement** that the ultimate object of Parliament was to confer Dominion Status on India. The Indian was ardently looking forward to a declaration of this kind. To him, the realization of that ideal was a simple birth-right, not to be questioned, and therefore its omission from the announcement about the Round Table Conference was construed as an insult to the Indian nation. The Indian National Congress declined to take part in the proceedings of the Conference and launched the Civil Disobedience Movement in right earnest. Thousands of Indian men and women intentionally broke certain laws and thus courted arrest and im-

prisonment. The country at last came to be governed by a series of ordinances

§2 THE ROUND TABLE CONFERENCES AND THE ACT OF 1935

The first Round Table Conference was opened in London by King George V in the Second week of November 1930. Its deliberations lasted for ten weeks. After it had dispersed, a vigorous effort was made in India to bring about a reconciliation and truce between the Government and the Indian National Congress. Most of the imprisoned leaders and their followers were released. Lord Irwin the Viceroy, held prolonged conversations with Mahatma Gandhi and a settlement satisfactory to both parties was ultimately arrived at. The terms of the agreement were published by the Government of India and the Non-co-operation Movement was called off. Mahatma Gandhi later on proceeded to England to attend the second Round Table Conference which was convened towards the end of 1931.

But during this interval, an unexpected change had taken place in the British political situation. The great economic depression had produced a grave national crisis. The Labour Party was disrupted and had gone out of office. A National Government was specially brought into existence to manage the affairs of the state. It was predominantly conservative in character and was not particularly enthusiastic to accelerate India's political advance. There was also another very disquieting factor. The differences between Hindus and Muslims appeared to be quite irreconcilable. An agreed solution of the communal problem was found to be impossible. The second Round Table Conference therefore ended inconclusively. The communal question was referred to the arbitration of the Prime Minister.

In the meantime, circumstances in India had taken a very unhappy turn. After the return of Mahatma Gandhi from England at the beginning of 1932, the Civil Disobedience Movement was revived and the leader and a number of others were sent to jail. The Prime Minister's award on the communal question was published a few months later and the world was staggered by the announcement that Mahatma Gandhi had decided to fast unto death as a protest against some of the clauses of the award which referred to the Depressed Classes (or scheduled castes, also called Harijans) of Hindu society. Hurried conversations and negotiations were held behind prison bars, and ultimately an agreement was reached. It was embodied in what has been since known as the Poona Pact. The Communal Award was modified accordingly and the historic fast came to a happy end.

Late in 1932, the third Round Table Conference was convened in London. It considered the reports of various sub-committees appointed previously and formulated its own recommendations before dispersing at the end of 1932. These recommendations were considered by His Majesty's Government, and in March 1933 the latter published a White Paper containing their own proposals. These were considered by a Joint Committee of both the Houses of Parliament in consultation with a few Indian representatives nominated by the Government. After the publication of that Committee's report a Bill was introduced in Parliament to give concrete shape to the net achievement of such prolonged investigations and discussions and to translate them into practical reality. The Bill was finally passed as an Act in September 1935.

Thus an eventful chapter in the constitutional history of India came to an end. The sending out of the Simon Commission three years before the appointed date was regarded as a special gesture of parliamentary sympathy with the Indian desire for a speedy revision of the Montford constitution. Yet not less than ten years were to elapse before any concrete results could be achieved. The new constitution was partially inaugurated on 1 April 1937. It was a long period of expectancy and suspense which tried Indian patience, and at the end there appeared to be no adequate compensation for the delay in the shape of a new constitutional structure which fully satisfied India's political aspirations.

§3 THE TWO BRANCHES OF INDIAN ADMINISTRATION

Unlike most of the pre-British conquerors of India, the British did not abandon their country and permanently settle in the land of their conquest. The Mussalman invaders of India, for instance, made India their home even though they originally belonged to Central Asia. To the British, Great Britain is the vital centre of imperial activity, that little island is the point of convergence of a vast empire. The British rule over India from Britain and the Indian administrative structure has therefore to take cognizance of two distinct entities. One is the country which is governed and the other is the nation which governs it. The two stand apart from each other. The distance between them is not only political and racial but it is also geographical.

The ultimate authority is naturally exercised by the sovereign people from their island home. They appoint an agent in England to function on their behalf and to keep in the closest touch with them. In this agent are vested the supreme powers of supervision over the Indian officials. He reflects the opinions and moods of the British demos.

On the other hand, the work of actually governing the conquered territory is entrusted to a body of officers who have to work and live in India itself. They are the men on the spot who are in direct contact with the subject population.

The Indian administrative machine is therefore divided into two branches. One operates in India, and is of course much the bigger in bulk and extent. It is composed of the Government of India and the Provincial Governments. The other operates in England and serves as the instrument for enforcing the will of the sovereign. It consists of the Secretary of State, his Advisers, and their establishment known as the India Office. In the interests of clarity, it is best to make an independent study of each branch and also of their mutual relations, and this method is adopted in the following pages.

PART II
INDIAN ADMINISTRATION IN ENGLAND
OR
THE 'HOME' GOVERNMENT

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VII. THE SECRETARY OF STATE FOR INDIA

§1. QUALIFICATIONS AND APPOINTMENT

THE East India Company was abolished in 1858. Control over Indian administration was vested thereafter in the Crown and Parliament of Britain. For the adequate and efficient fulfilment of those responsibilities, a new post of a principal Secretary of State was created. To him were transferred all the duties and functions that were formerly performed by the Court of Directors and the Board of Control. Like all British Ministers, the Secretary of State for India is a representative and a servant of Parliament. Through him are exercised the sovereign powers of that supreme body.

The Secretary of State must be a member of Parliament, sitting either in the House of Commons or in the House of Lords. On very rare occasions it may happen that he is nominated to office when he is not a member of either House. But it is distinctly laid down that within six months of such a nomination he must find a seat for himself in the legislature. This may be done in two ways. A sympathetic and obliging friend may purposely resign his own seat in the House of Commons and the Secretary of State may then successfully contest that vacancy. Or he may be created a peer and elevated to the House of Lords.

The Secretary of State is not only a member of Parliament but is also given a place in its inner council, which is known as the Cabinet. Membership of the Cabinet is an exalted political status. Its attainment necessarily implies the possession of several outstanding qualities. All governmental powers in the British democracy are concentrated in the Cabinet. It is an assembly of some of the most eminent, intelligent and popular political leaders in the country. They belong to the same party and are bound to each other by an affinity of opinions and principles. The Cabinet can be aptly described as the *primum mobile* of the British constitutional machine.

The fact that the Secretary of State for India is one of the foremost constituents of the British Cabinet is therefore significant. It automatically prescribes qualities which the holder of that post is expected to possess. He should have considerable reputation and influence in the public life of Britain. He should be closely associated with a political party and prominent in its counsels and leadership. It is not necessary that he should have acquired first-hand knowledge of India and its problems.

He is not supposed to have made a personal study of the history and geography of India or of its political and economic conditions before he assumes office. His general intellectual training and the assistance of experienced permanent officials are expected to give him a proper perspective in the performance of his duties.

The distribution of portfolios among members of the Cabinet is effected principally on the initiative of the **His appointment** leader of the party in power. It is usually done in consultation with the important party luminaries. The maximum of efficiency is aimed at in selecting different individuals for different tasks. The choice of the Secretary of State for India can be said to be made chiefly by the Prime Minister after an exchange of views with his prominent associates.

§2 RESPONSIBILITY TO THE CABINET

Like all Ministers in the Cabinet, the Secretary of State is **Previous consultation with colleagues** responsible, in the first instance, to his immediate colleagues. He must keep them adequately informed of all new lines of action that he may propose to adopt in his department. The wider aspects of his policy must be fully explained to them and discussed with them. Their assent and support are required for all important innovations. No decision can be announced as the decision of His Majesty's Government unless agreement has been previously reached about it among the majority of the Cabinet. Then only does it become the collective responsibility of the whole unit.

The Cabinet exists and functions as an indivisible entity. **Differences with them** Its members profess the same political faith and owe allegiance to the same political party. They are heirs to a common legacy of the same traditions and philosophy. Disagreement between them would therefore pertain rather to details and degrees than to fundamental principles. However, sometimes the unexpected may happen. Serious differences may arise between the Prime Minister and any of his colleagues or between one Minister and the rest of the Cabinet. In 1928, for instance, Mr Montagu incurred the intense displeasure of his chief, Mr Lloyd George. As recently as 1935, the repudiation by the Cabinet of the Hoare-Laval Pact was equivalent to a condemnation of the Foreign Secretary, Sir Samuel Hoare.

In such exceptional cases, the only honourable alternative **Their consequences** for a dissenting member is to resign his office. He must obviously part company with political comrades when he has ceased to believe in their politics. Both Mr Montagu and Sir Samuel Hoare, in the examples quoted above, tendered resignations of their ministerial office as soon as a grave divergence was discovered between them and their colleagues. For the same reason Mr Anthony Eden resigned the

post of foreign Secretary in 1938. The Prime Minister and other members of the Cabinet can compel an intractable companion to make his immediate exit from the official fold. No violently discordant element can be tolerated in the innermost council of the State.

§3 RESPONSIBILITY TO PARLIAMENT

As has been stated before, the relations of the Secretary of State with Parliament are those of servant with master. He is essentially the interpreter of the parliamentary will and the instrument of its authority. His obedience to that body is absolute and complete. He continues to be in office only so long as Parliament desires that he should be. Even a faint indication of Parliament's disapproval of his conduct is sufficient to precipitate his downfall. Any member of that chamber can put questions to him. He must supply all information and give satisfactory explanations. His actions can be subjected to the most searching criticism. In the last resort, he is liable to dismissal by a vote of the legislature.

In consistency with British parliamentary practice, the Secretary of State for India, as a member of the Cabinet, comes into office with his party and goes out with it. The Cabinet works on the principle of joint responsibility. It remains in power only so long as it enjoys the confidence of Parliament. There can be no fixity of tenure under such a system. The life of Parliament is prescribed to be five years, unless it is dissolved earlier. So the maximum period of office that the Secretary of State can enjoy at a stretch is five years. In actual practice it is found to be much less because it is determined by the exigencies of British politics.

§4 THE UNDER-SECRETARIES AND THE INDIA OFFICE

The Secretary of State for India, like other Cabinet Ministers, is helped in his work by two assistants who are known as Under-Secretaries. They are highly placed officials, but the constitutional position and equipment of the two Under-Secretaries differ fundamentally. One fills a political, the other a bureaucratic role. The purpose they serve are not identical but complementary.

In qualifications and status, the Parliamentary Under-Secretary is a miniature of his master and chief. They are similar to each other in almost all respects, except in the degree of eminence and seniority. The Parliamentary Under-Secretary must be a member of Parliament. Whenever possible, he is selected from that House of which the Secretary of State is not a member. He has to expound the policy and actions of the Government.

on the floor of the legislature and to do all such work as may be assigned to him by the Secretary of State. He forms part of the Ministry, though not of the Cabinet, and has to accept or to relinquish office according as his party decides and directs. In fact, the Parliamentary Under-Secretaryship is often held by able and ambitious juniors. It frequently serves as a stepping-stone to higher office.

The Permanent Under-Secretary belongs to a different category. He is not a politician and is debarred from being a member of Parliament. He is an official of the Civil Service and is guaranteed fixity of tenure during good behaviour. At the end of a long and distinguished service in his department, he is selected to be its executive head. He controls all the secretariat staff and looks to the safety and orderly arrangement of the papers and documents in his charge. The happenings in his administrative sphere are intimately known to him. Information about facts and statistics is always ready in his possession.

The Secretary of State is an intelligent but an ignorant stranger to his department. He is an ever-changing factor in the governmental picture. The period of his office is precarious. Under such circumstances, the continuity and the length of service of the Permanent Under-Secretary are of inestimable advantage. (He becomes an encyclopædia of expert knowledge which the political superior can consult with profit.) He supplies the raw material on which decisions and policies can be based. The fixed and the fluctuating elements are thus happily combined in the structure of the administrative system.

For carrying on work of a purely routine and administrative nature, the Secretary of State is required to have a large official establishment, (which is known as the India Office). It comprises clerks, typists, superintendents, accountants, etc., serving in different grades and situations. Their total number comes to about 300 and all of them are recruited in Britain. Those who are appointed to posts in the higher grades are selected as a result of the Civil Service Examination. The most successful of these civil servants can aspire to rise to the position of the Deputy Permanent, and eventually of the Permanent, Under-Secretary of State. Promotion to these high offices comes by seniority and merit. It is this secretarial establishment which keeps the executive machinery constantly and efficiently moving and maintains the continuity of departmental action.

§5 SALARY AND EXPENSES

The salaries and the office expenses of the Ministers of a country would naturally be a charge on its people. Those who receive services are expected to pay for them. Such a propo-

sition would appear to be too self-evident to need elucidation. Yet the justice of this dictum was not accepted by the British constitutionalist in respect of the salary of the Secretary of State for India till as late as the Montford Reforms.

At least after the abolition of the East India Company in 1858, if not before, the salary and expenses of the special Cabinet Minister who was entrusted with the supervision of the Indian Government should have automatically devolved upon the British public. However, Parliament could not resist the temptation of continuing the distinction which had been introduced at the end of the eighteenth century. | Alone of all the Ministers of the Crown, the Secretary of State for India was not paid from the British Exchequer. His salary was not directly voted by the House of Commons but was charged to the revenues of India.

This was an application of the principles of business accountability with a vengeance. The expense of keeping the Indian estate was to be debited to the estate itself. It was argued that the British citizen should not be financially penalized for creating an agency to supervise the administration of a subject country. | Such a convenient profit and loss calculation was one-sided and unjust, because it completely ignored the gains which accrued from the conquest. In fact, it was typical of the antiquated colonial doctrine which looked upon a colony or a conquered territory merely as the private property of the mother country. That doctrine is now discarded as being short-sighted and incompatible with modern political and social tendencies. It must be noted that the salaries of the Secretaries of State for the Dominions and Colonies were not charged to the Dominions or the Colonies but have been contributed by England. Indians bitterly complained against the discrimination of which they were the victims.

The charging of the Secretary of State's salary to the exchequer of the Government of India had another incidental result. Parliament gets the opportunity of criticizing and controlling departments of public service in England because it is called upon to vote expenditure for them, including the salaries of their heads. That was not possible in the case of the India Office. The Indian question did not automatically come up before Parliament for discussion when need arose for voting the Secretary of State's salary at the time of the budget. There was no question, indeed, about the competence of Parliament to interfere in the affairs of its dependency, | but the normal and routine control which follows as a corollary of the power of holding the purse-strings could not be exercised over Indian adminis-

tration because of the financial independence of the Secretary of State

Mr Montagu proposed the necessary improvement in this **Mr Montagu's** unseemly position [After the Act of 1919,] the **action** salary of the Secretary of State for India was accepted as an obligation of the British public and provided by it. This does not mean that all the expenses of his establishment and office were also being incurred by the British people. They were a charge upon the revenues of India, but the British Treasury made an annual grant-in-aid towards them to the extent of £150,000.

The Act of 1935 has proposed an interesting change in this **Change made** arrangement. Section 280 begins by prescribing **by the Act** that the salary of the Secretary of State and also **of 1935** the expenses of his department, including the salaries and the remuneration of the staff, shall be paid out of monies provided by Parliament. [The subsequent clause of the same section goes on to add that there shall be charged on, and paid out of, the revenues of the Indian Federation, such periodical and other sums as may represent the Secretary of State's expense for performing duties on behalf of the Federation.]

The change thus introduced may therefore prove to be merely **The change** theoretical and verbal. Till the inauguration of **may be only** this new system India used to bear the expense of **nominal** the India Office, and Parliament was pleased to make a contribution towards a part of it. Hereafter, Parliament will bear that burden but may demand a contribution from India. There is thus a definite alteration in appearances. But what really matters to India is the net amount of money she will be called upon to pay. If in actual practice there is no substantial decrease in that burden, the only achievement of the Act of 1935 would seem to be to bring about a somersault in the constitutional position. [The Government of India, who were the recipients of a grant-in-aid from the British Treasury, have been transformed into an authority which makes a grant to the latter.] But there is no assurance that the monetary commitments of India will be appreciably diminished.

§6. POWERS AND FUNCTIONS

To the Secretary of State is entrusted the duty of managing **Described in** those departments of the Government of India **the Montford** which have to function in England. The Montagu-Chelmsford Report has described his powers as they existed when the Report was written. They were extremely comprehensive in range and included every important item. All projects of legislation whether in the Indian or in the Provincial Legislatures had to go to the Secretary of State for

approval in principle. Before him were laid all variations in taxation or all measures affecting revenues, measures affecting customs, currency operations and debt, and proposals which involved questions of policy or large expenditure. Construction of public works and railways, creation of new appointments above a certain grade, raising of the pay of others or the revision of establishments beyond a certain sum, large charges for ceremonial or grants of substantial political pensions, grants for religious and charitable purposes, mining leases and other similar concessions, additions to military expenditure, were all matters in which close restrictions were put upon the powers of the Government of India by the Secretary of State.

The Act of 1919 also stated that the Secretary of State may
Defined by superintend, direct and control all acts, operations
the Act of and concerns which relate to the government or
1919 the revenues of India } All grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India, required his sanction. This power was to be exercised subject to the other provisions of the Act and rules made thereunder.

The Act of 1935 has introduced a new constitutional structure.
Changes made (The British Indian provinces have been
by the Act shaped into autonomous units. At a later stage,
of 1935 these units and the Indian States may be joined in an All-India Federation under the British Crown. The principle of political responsibility may be introduced in the Federal Government to a certain extent. Theoretically, this change is of vital importance. It demands and implies not only relaxation of control by the Secretary of State, but a fundamental alteration in the status of the governments in India.) They now derive their power directly from the Crown of England. It would no longer be correct to describe them as mere agents of the Secretary of State, even though he still continues to be their official superior.

Sections 278-84 of the Act deal with the Secretary of State,
An omission his Advisers and his Department. They contain
in the Act fairly elaborate provisions concerning several points. In none of them, however, is specifically embodied his former power of superintendence, direction and control. The omission seems to be deliberate and may have some value in pure constitutional theory. It may be in accord with the elementary principles of federal polity. A federated India with its constituent autonomous units cannot be allowed to remain subject to the daily supervision and control of the Secretary of State. It must be emancipated from the intrusions of a distant superior. The Act of 1935 may be said to have brought about this necessary reform by doing away with all reference to the powers of superintendence, direction and control with which the Secretary of State was invested by the former Acts.

However, the practical utility of such an academic negation may not prove to be great, because it does not derogate considerably from the powers of the Secretary of State. Sections 14 and 54 of the Act clearly lay down that whenever the Governor-General or the Governor is required to act in his discretion or in his individual judgement, he shall be under the general control of, and comply with such general directions, if any, as may from time to time be given to him by the Secretary of State and the Governor-General respectively.

A perusal of the Act will show that the number of occasions on which and the purposes for which, these authorities are required to act in their discretion or to exercise their individual judgement is large. No important subject has been omitted. Defence, external relations, the I C S, the Indian Police Service, the Federal Railway Authority, the Reserve Bank of India and the all embracing Special Responsibilities of the Governor-General and the Governor, are all subject to the control and supervision of the Secretary of State. In theory at least, even after the Act of 1935 his views and attitude can affect the whole sphere of Indian polity.

§7 RELATIONS WITH ADVISERS

The Secretary of State was given the assistance of a Council, known as the India Council, by the Act of 1858, and this Council was closely associated with him in the work of Indian governance. The Secretary of State had the power of appointing its members and of framing rules for the transaction of its business. The Council was essentially an advisory body and its opinion was not binding upon the Secretary of State except in respect of matters concerning finance and the Services. The Act of 1935 has abolished the India Council and substituted in its place a new body called the Secretary of State's Advisers. The latter began to function from April 1937.

The relations of the Secretary of State with his Advisers are clearly defined in the Act. He makes their appointment and determines their number within the prescribed limits. It is entirely in his discretion whether to consult or not to consult with them on any matter. He may call a meeting of all of them or of only some of them, or may take the opinion of any one of them individually. Even when their advice is sought and given, the Secretary of State is at liberty to accept or to reject it. The views of the Advisers are binding only in regard to questions which concern the superior Services in India. The authority of the Secretary of State is thus practically unhampered in spite of the existence of the body of Advisers.

§8 RELATIONS WITH THE GOVERNOR-GENERAL

The Secretary of State is the agent of the Crown and Parliament of Britain. As such he is invested with supreme authority over the Indian Government. He is answerable to Parliament for the mistakes and misdeeds that may be noticed in the operation of the department in his charge. It is his duty to adjust the tone and manner of Indian governance so as to harmonize them with the wishes and sentiments of Parliament. He is the link between the British people and the Indian bureaucracy. He stands higher than the highest official who rules over India in royal pomp and magnificence. The Governor-General-in-Council is required by law to pay due obedience to such orders as he receives from the Secretary of State.

Legally, therefore, the position is clear. In case of a conflict between the Secretary of State and the Governor-General, there is no ambiguity on the question as to who should yield. The Secretary of State's decision is final. The Governor-General has either to accept his superior's mandate or, in the alternative, to resign his office. Theoretically, therefore, no deadlock can arise between the two authorities because they are not co-ordinate. Even such an able and aggressive Viceroy as Lord Curzon had to bow to the relentless logic of this constitutional definition. And strangely enough, his resignation was destined to be provoked by the unyielding attitude of that very ministry which, being composed of his friends and partisans, had taken the unprecedented step of sending him out as Viceroy for a second time, in recognition of his splendid services.

However, an enunciation of this legal relationship does not, by itself, give an adequate idea of the whole picture. It misses a very important aspect of the practical truth. It leaves unsaid what actually and emphatically exists even in the absence of law or in spite of it. Circumstances dictate their own conventions and codes which contribute substantially to the shaping of realities. They must be as fully understood as the letter of the law.

It must be remembered that the Governor-General is specially sent out from England to act as the head of a vast bureaucratic government. His selection is made from the same higher strata of the intellectual and political life of England from which the Secretary of State is also drawn. He is the man on the spot in India and is in direct charge of its huge administrative machine. It is he who is faced with the difficulties of its working and who has to grapple with them with tact and firmness. The responsibility of maintaining peace and order and the duty of conducting the

complex operations of government in the vast Indian Empire lie heavily on his shoulders

On the other hand, the Secretary of State is separated by a long distance from the actual scene of the exercise of his authority. He has no personal touch with either the Indian official or the Indian citizen. As a member of the Cabinet, his attention is likely to be as much preoccupied with the problems of British politics as with those of Indian administration. His constant interference with the work of Indian officers would be, in the graphic analogy of the Indian proverb, like driving sheep on the ground from the altitude of the camel's back. It would be physically impossible for the Secretary of State not to allow a certain degree of independence to the views and the actions of the Viceroy.

The intensity of his control will, of course, vary with the intensity of the interest taken in Indian affairs by members of Parliament. If the House of Commons is very keen to know the course of events in India and to influence them, the Secretary of State will have to be particularly active and vigilant. If, on the other hand, the British masters choose to remain apathetic and uninterested, then servantry naturally tends not to interfere.

There is also the factor of what is known as the personal equation between the Secretary of State and the Governor-General. Much depends upon the relative strength and qualities of these men. The more energetic and forceful of the two personalities will naturally carry the day. Aggressive secretaries like Lord Morley enunciated and acted upon the doctrine that the Government of India were merely the agents of the Secretary of State. On the other hand, it is easily conceivable that some brilliant and capable Viceroys have successfully dominated the Secretaries of State. If the two authorities prove to be equal in gifts and influence, a clash may sometimes occur. The Governor-General has then to give way to the Secretary of State.

After all, the distance between two such very high dignitaries can only be one of degree. It is created only for ensuring that the constitutional machine does not come to a standstill as a result of insurmountable difficulties. Otherwise the Secretary of State and the Governor-General are essentially co-workers and companions, standing on the same elevated platform, but with a little variation of the levels. The status of superior and subordinate has not that significance in their mutual relations which it inevitably has in the lower official world.

§9 CAUSES OF THE INCREASE IN THE SECRETARY OF STATE'S POWERS

In earlier days, before the abolition of the Company, the active interference of the Home authorities in Indian administrative details was necessarily less than in later years. Various factors contributed to bring about a change in the degree of centralization after the assumption by Parliament of direct responsibility for the government of India. The fact of such assumption itself was a considerable factor, inasmuch as the holders of the new office of Secretary would be necessarily men of greater influence and political consequence in Parliament. Nor did the old duality of the President of the Board and the Directors continue under the new dispensation. The powers of both of them were henceforth centred in one and the same person.

The India Council was not a body consisting of persons ignorant about India and having little leisure to look after Indian affairs in detail as the old Directorate had been. For the most part, the Council consisted of persons who had retired from service in India and who, because of their intimate personal knowledge, could exercise a more stringent control over the actions of the Indian authorities. Supervision over the management of Indian finance and a close scrutiny of expenditure and income now became an important duty of the Secretary of State, and strengthened his control.

Lastly, the geographical isolation resulting from the big distance which separates England and India, making speedy communication between them impossible in those days, no longer existed after the construction of the Suez Canal in 1869. In the following years the two countries were linked by submarine cable, and telegraphic transmission of messages between them became possible. The authorities in England henceforth issued detailed and positive orders. The independence of the Government of India as the *de facto* power on the spot vanished. Distance and time were no longer serious obstacles to the exercise of close supervision from England. The Secretary of State claimed the authority to guide and control even the details of administration, and friction naturally arose.

Secretaries like Lord Morley enunciated and acted upon the doctrine that the Government of India were mere agents of the Government in England. Lord Morley claimed the liberty of corresponding directly with any official in India, a claim which was bitterly resented by Lord Minto as tending to demoralize the discipline of the administration. Viceroyalties like Lord Elgin and Lord Ripon complained of the excessive domina-

i The assumption of authority by Parliament

ii The creation of the India Council

iii The Suez Canal and electric cable

Assertion of the Secretary of State's legal superiority

tion of the Secretary of State. Attempts were indeed made in the past to enunciate for the Government of India greater liberty of action and freedom from the Secretary of State's overpowering control. Lord Mayo's Government, for instance, protested at being required to pass bills like the Contract Act and the Evidence Act in the form in which the Secretary of State approved of them, without reference to the Indian Legislature. In reply, the Home Government proceeded to assert its rights of control in the most emphatic manner. Mr Disraeli's Government was equally decided in affirming similar constitutional rights when Lord Northbrook's Government attempted to assert the independence of the Government of India in fiscal matters. One more occasion to define clearly the Secretary of State's and the British Parliament's superior position arose in 1894 when, at the time of the debate on the Cotton Duties, Sir H. Fowler laid down positively that the principle of united and indivisible responsibility which was recognized as binding upon the British Cabinet also applied to the Indian Executive Council. In the case of a difference of opinion between themselves and the Secretary of State the members of the Government of India who disagreed were asked either to act with the Government or to tender their resignations. Parliament's and the Secretary of State's undoubted supremacy over the Government of India has thus been clearly asserted several times.

With the gradual creation of an autonomous Indian Dominion with full and unrestricted rights of self-government, the Secretary of State must inevitably cease to be invested with that administrative importance and control which he now possesses. In that event it is even possible to contemplate that his office may be merged in that of the Secretary of State for the Dominions, whose constitutional status *vis-a-vis* the mother-country has been amplified by the Statute of Westminster.

VIII. THE INDIA COUNCIL AND THE SECRETARY OF STATE'S ADVISERS

THE COUNCIL OF INDIA

§1 REASONS FOR ITS CREATION

By the abolition of the East India Company in 1858, a long-standing connecting link between England and India was finally removed. It created a perceptible gap in administrative arrangements, particularly because of the disappearance of the Court of Directors. The newly created Secretary of State for India was not selected to hold his office because of his special knowledge of Indian affairs. More often than not, he was totally ignorant about them. He therefore required considerable assistance and guidance in the discharge of his duties. The need was all the greater because of the peculiar political circumstance in which India was placed.

This conquered country, unlike the Dominions, was governed from top to bottom by a foreign bureaucracy. The people of India had not the slightest control over the Government of India. They were permitted to enjoy the civic privilege of being compelled to pay taxes and to obey laws. But there were no representative legislatures in India to voice popular feelings, to enact laws, to vote expenditure, and to direct the administrative system.

It therefore became necessary to provide some other effective check on the actions of Indian officers. Obviously, they could not be allowed to reign in unbridled authority. That would have been as detrimental to the interests of England as to those of India.

Every bureaucracy must be ultimately responsible to some superior authority. Otherwise, there is great danger of its deteriorating into a pernicious tyranny. The Secretary of State was therefore called upon to superintend the details and the policies of the Indian administration to a very great extent. Every important item of legislation, executive action, and finance was required to be submitted for his previous approval and sanction.

The proper performance of such an elaborate duty imposed a heavy responsibility on the Secretary of State. That superior parliamentary official was a curious combination of power and ignorance. It was prudent to take the precaution that his final decisions were not vitiated by a lack of proper relation to realities. Hence, the Council of India was formed. It was com-

posed of persons who had to their credit long years of service in India, and had retired from responsible positions. **Men with Indian experience appointed to the India Council** Select and first-hand Indian experience was thus gathered together to be of active help and enlightenment to the Secretary of State. He was expected to benefit not merely by division of labour but by a valuable accession of knowledge

There was another incidental consideration of some importance Just as it was hazardous to leave the Indian bureaucracy to its own uncontrolled judgment, so also was it a little undesirable to allow the Secretary of State to have unrestrained authority in an extensive administration with which he was not personally familiar His exercise of that authority had to be prevented from developing into a mild type of political absolutism He was, of course, responsible to Parliament But that august body was not likely to concern itself with his daily routine The India Council can perhaps be conceived as a limited constitutional restraint on his superior powers, without diminishing in any way his pre-eminence and prestige

§2 A SHORT HISTORY

The India Council was instituted for the first time by the **The Act of 1858** Government of India Act of 1858 It consisted of fifteen members of whom eight were appointed by the Crown and seven elected by the Directors of the East India Company The majority of them were persons who had served or resided in India for at least ten years and had not left India more than ten years before their appointment At least nine members were required to possess these qualifications The power of filling vacancies of Crown appointments and of filling other vacancies in the Council itself was vested in the Crown The members were to hold office as long as they fulfilled their duties satisfactorily, but they were debarred from becoming members of Parliament and might be removed from office on an address of both the Houses of Parliament Their salary was fixed at £1,200 a year The Council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India The Secretary of State was to be the President of the Council with power to overrule in cases of difference of opinion and with power to send dispatches to India, without reference to the Council, in matters which might be regarded as urgent and secret Weekly meetings were held for the disposal of business Some of the patronage of the Directors was vested in the Secretary of State in Council

Changes were made in the constitution of the Council from time to time Thus the Government of India Act of 1869

vested in the Secretary of State the right of filling vacancies in the Council, it also reduced the term of its tenure to a definite period of ten years. At the same time special power was given to the Secretary of State to reappoint old members for a further period of five years for special reasons of public advantage. In 1889 the Secretary of State was allowed to abstain from filling vacancies in the Council till its number was reduced from fifteen to ten. The Act of 1907 fixed the number of members at not less than ten and not more than fourteen, and reduced the term of office from ten to seven years. The salary of a member was reduced from £1,200 to £1,000 per annum. From this year, two Indians were included in the Council as members, one of them being the late Sir K. G. Gupta.

The Act of 1919 introduced further important changes. Under that Act (i) the Council of India was to consist of not less than eight and not more than twelve members, as the Secretary of State might from time to time determine. The right of filling a vacancy remained as before with the Secretary of State. Half the number of the members had to be persons who had served or resided in India for at least ten years and had not last left its shores more than five years before the date of their appointment. (ii) The term of office was to be five instead of seven years as before. The shortening of this period was calculated to ensure a continuous flow of fresh experience from India and also to relieve the Indian members of the necessity of spending a long period of seven years away from their homes in a foreign country. The Secretary of State's power of reappointing a member for a further term of five years, the reasons for which he had to place before Parliament, was retained, otherwise no member of the Council was capable of being nominated again to that body. Any member was of course at liberty to resign his membership and any member might be removed from office by His Majesty on an address from the House of Parliament. (iii) The annual salary was fixed at £1,200 for each member, those domiciled in India at the time of their appointment receiving in addition an annual subsistence allowance of £600. The salaries and allowances might be paid either out of the revenues of India or out of moneys voted by Parliament. (iv) The Indian element in the Council was increased from two to three members. (v) All the agency work of the Secretary of State in Council was henceforth to be transferred to a High Commissioner for India. A good deal of the Council's work was therefore decreased. (vi) The concurrence of a majority of votes at a meeting of the Council was required for the following purposes: (a) grants or appropriations of any part of the revenues of India, which meant practically expenditure of Indian revenue; (b) making of contracts for the purposes of the Government of India.

Act 1919, and (c) making of rules and regulations for the Services in order to fix the conditions of their employment and their position

The Council of course could not initiate any expenditure. It was further provided that 'the revenues of India shall be applied for the purposes of the Government of India alone'. After the Montford Reforms, the Council's control over expenditure on Transferred subjects was almost wholly withdrawn. Nor was the consent of the Council required for 'votable' expenditure on the Reserved side. Even in the non-votable items of provincial finance, though its control in theory was unrestricted, in practice a wide delegation of powers was made to authorities in India. A large portion of the expenditure of the Central Government was non-votable and the Council's sanction was therefore extensively required in the case of the Central finances.

The Council worked by the system of committees, its members were divided into various groups, and to each such group, known as a Committee, was allotted the task of transacting business in one or more departments. For example there were different committees for finance, public works, revenue, political, military, and legal matters, stores, etc., corresponding to a similar division of departments in the Viceroy's Executive Council. Each department had a Secretary of its own selected by the Secretary of State. All correspondence and proposals connected with the different branches of the administration were referred to the respective committees by the Secretary of the department before being finally laid before the Secretary of State in Council.

The Committee did all the preliminary work of investigation and consideration of the pros and cons of proposals referred to it. The decision of the Committee was sent on to the Permanent Under-Secretary of State who then referred the matter to the Secretary of State. The latter either allowed the former to issue orders or issued them himself, or, if the matter was important, ordered the question to be put before a full meeting of the Council for final disposal. It was the usual practice to hold full meetings of the Council every month.

The nomination of members to the Council was exclusively a privilege of the Secretary of State. The method of its working had crystallized into a routine, the most prominent part of which was the formation of committees and the distribution of departments of Government among them so as to suit the convenience of administration. It was this dilatory routine which Mr Montagu condemned in his famous speech in Parliament in 1917 as cumbrous and as designed to prevent efficiency.

It will be easily realized that the Council, as a political factor, was largely dominated by the influence and importance of the Secretary of State. This high official with his status of Cabinet Minister and large powers completely overshadowed its

existence **Status of the Council** It could not be described as being either a legislative or an executive or a judicial body. Nor could it be considered as an effective restraint upon the actions of the Secretary of State except in respect of rules and regulations for the Services. In fact it had the distinction of being an advisory council whose advice might or might not be sought, and if sought might or might not be accepted by the high official for whom it was intended to serve as a guide.

§3. INDIAN CRITICISM OF THE COUNCIL

Indian politicians were always very critical of the India Council. They felt that it served no useful purpose and was positively injurious to the interests of India. It was therefore urged that the total abolition of such an unwanted chamber was the only effective measure for its reform. The following were the main grounds of criticism.

Its unhealthy composition From the Indian point of view, the composition of the Council was extremely unhealthy. An assembly of the retired members of the Indian Services may prove to be a storehouse of valuable information. Unfortunately, it may also represent a mischievous concentration of reactionary opinions and ideas. A conservative outlook is almost an inseparable feature of the bureaucratic mind. It worsens into obstinacy and intolerance if the bureaucracy is not required to live in the salutary fear of the popular will. Indians naturally disliked the association of the Secretary of State with such a retrograde influence. If, by chance, he happened to be a man of liberal ideas, the weight of the India Council would probably be cast in the opposite direction.

Incompatibility with the ideal of self-government There was another vital argument. The grant of political right to India necessarily implies the withdrawal of British control over that country. A self-governing India and a body like the India Council, with its special powers and veto, could not really go together. It was an incongruous combination. As the status of India approximates more closely to the status of the Dominions, interference in Indian affairs by Councils and even by Secretaries of State from outside must cease. The India Council was not condemned merely because it was a worthless and costly superfluity which involved an avoidable waste of money. Its existence was fundamentally repugnant to the concept of political freedom which it is the keen aspiration of India to achieve at an early date.

THE SECRETARY OF STATE'S ADVISERS

§4. REASONS FOR THEIR APPOINTMENT

The Act of 1935 takes an apparently momentous decision in regard to the Indian Council. Clause 8 of section 278 lays down

that the India Council should be dissolved. Effect has been given to that provision from April 1937, and the Secretary of State has appointed Advisers as prescribed by the Act. The impression therefore may be created that in respect of the abolition of the India Council the wishes of the Indian people have been fully complied with. Such a notion would be erroneous. The reform that is introduced is not so complete.

The Act does not contemplate the transfer of all control over India from the Englishman to the Indian. **No complete transfer of power to India** The old constitutional logic therefore continues to persist unabated. As long as parliamentary authority is maintained over the Indian Government to any extent, the Secretary of State cannot be relieved of all his administrative responsibilities. It naturally follows that he cannot be deprived altogether of the advice of experts who have a personal knowledge of Indian conditions. If the India Council is abolished in deference to Indian wishes, a substitute has had to be created to perform its functions. The new body consists of persons who are known as Advisers to the Secretary of State.

c5 THEIR CONSTITUTION, QUALIFICATIONS AND FUNCTIONS

Appointment The Advisers are to be appointed by the Secretary of State.
Constitution and status *Number* Their number is to be not less than three nor more than six as the Secretary of State may from time to time determine. A person who before the inauguration of provincial autonomy was a member of the India Council—that is before 1 April 1937—may be appointed as an Adviser to hold office for such period less than five years as the Secretary of State may think fit. During the transitional period till the actual establishment of the Federation, the number of Advisers is to be not less than eight and not more than twelve as in the case of the India Council.

Qualifications At least one half of the number of advisers must be persons who have held office for at least ten years under the Crown in India. They must not have last ceased to perform in India official duties under the Crown more than *two* years before the date of their appointment as Advisers. In practice, they will be persons who have occupied exalted stations in the Indian hierarchy and have retired after a long period of service in varied capacities. It is also ensured that their experience should be quite recent and fresh so that the standards of judgement that they adopt do not become out of date. The Advisers are not capable of sitting or voting in either House of Parliament.

Tenure The term of office of an Adviser is to be five years

and he will not be eligible for reappointment. He will be at liberty to resign his office at any time, and the Secretary of State may remove him on grounds of physical or mental infirmity.

Salary Each Adviser gets a salary of \$1,350 a year. If any of them is domiciled in India at the time of appointment, he will get an additional subsistence allowance of £600 a year. It is a welcome financial relief to Indian members. They are required to keep two homes, one in India and the other in England. Their expenses are naturally heavier than those of Englishmen living in England. Money for this expenditure is to be provided by Parliament. It will no longer be a burden upon Indian revenues.

Functions The Advisers have no legislative, executive or judicial functions. It is their duty to advise the Secretary of State on any matter relating to India on which he may desire their advice. The powers conferred on him with regard to the Services (Part X of the Act) are not exercisable by him except with the concurrence of his Advisers. Members of the Services in India are therefore assured of adequate protection for their special rights and privileges, because they are entrusted to the benevolent care of senior members of their own fraternity.

Status It will be in the discretion of the Secretary of State whether or not he consults with his Advisers on any matter, and if so, whether he consults with them collectively or with one or more of them individually. He also decides whether to act or not to act in accordance with any advice given to him by the Advisers. The superiority and independence of the Secretary of State are thus emphasized. Even the corporate character of the Advisers is dispensed with.

§6 THE NATURE OF THEIR INFLUENCE

It will be easily seen that there is no fundamental difference between the Advisers and the Indian Council which **Insignificant powers** they have supplanted. The basis and purpose of the two bodies is the same. The only real power which the Advisers, like their predecessors, can be said to possess is in regard to rules and regulations about the Services. They are liable to be entirely ignored by the Secretary of State even when momentous decisions are required to be taken by him.

Thus, though the India Council as such has disappeared, a **They deserve to be abolished** very substantial shadow, bearing a close resemblance to the original, still persists as its successor. All the criticism that was directed against the India Council also applies to the new creation. The latter's veto in the matter of the Services is paradoxical and vexatious when political power is supposed to have been transferred to responsible Indian Ministers, and the sooner such an anachronism vanishes from the Indian constitutional picture the better for India.

IX. THE HIGH COMMISSIONER FOR INDIA

§1 LARGE REQUIREMENTS OF THE INDIAN GOVERNMENT

The post of the High Commissioner for India was created for the first time by the Act of 1919. There is one striking peculiarity of this important office. In the considerations which have led to its creation, politics and economics are closely woven together. The High Commissioner's duties are partly political and partly commercial. It is necessary to understand the full significance of such an interesting combination.

The Indian Government, like all governments, requires a large number of different kinds of articles in the performance of their civil and military duties. For example, the defence forces of the country have to be adequately equipped with food and clothing, arms and ammunition, tanks, warships, submarines, aeroplanes, gas masks, and similar types of modern mechanical contrivances. The construction and maintenance of big projects like railways, irrigation works, telegraph and telephone systems, broadcasting stations, and hydraulic power-houses, involves the utilization of an immense quantity of many sorts of materials. Even the comparatively simpler routine of the administration of modern days can hardly be carried on without the constant use of stationery articles like pens, pencils, pins, paper, ink, erasers, typewriters, bicycles, motor cars and buses, steam rollers, electrical goods, steam engines, chemicals, medicines, printing machinery and a hundred other important things.

How does a Government obtain all this mass of commodities?

Ordinarily, in a capitalistic community, the state itself does not directly undertake the work of industrial production but purchases most of its requirements from private manufacturers by payment of a price. A Government with a nationalistic outlook is keen upon seeing that the needs of the nation are satisfied, in a substantial measure, by the industry of its own people. The vast expenditure on national purchases can be so organized that it becomes an effective stimulus for the starting of new industrial ventures in a country and for strengthening them. The satisfaction of a nation's wants can itself be made to constitute a vigorous impetus and encouragement to its producers. It is particularly necessary to follow this policy in the case of a backward country like India.

India is a land endowed with an abundance of natural resources. It also possesses plenty of man-power. These two

valuable assets require to be intelligently organized into a productive combination. The results of such a uniting process would be remarkable. The economic and the moral fabric of the community will be immensely strengthened if the community's services are requisitioned for the satisfaction of the community's wants. No force could be more powerful for the mobilization of a country's creative gifts and their robust consolidation than the collective will of its people

The British bureaucracy which rules over India, and its British masters who control the Indian Government from their own island home, have not showed any eagerness to consider the subject of India's store purchases in terms of the material advancement of India. Orders for goods worth crores of rupees are being placed year after year outside the country. Bills for their value, swollen by the profits of a foreign manufacturer and of a number of foreign middlemen, are being continuously paid. No deliberate attempt has been made to turn this vast expenditure into an effective instrument for the industrial rehabilitation of the country. Nothing is more tragic in the history of modern India than this lapse on the part of its rulers

§2 THE METHOD OF PURCHASE

When a nation decides to purchase commodities from foreign countries what should be the guiding principle in making the purchases? Obviously, it must be to obtain the maximum amount of satisfaction at the minimum cost. The choice of the purchaser in such instances cannot be confined to the produce of a particular country. It ought to be determined by the advantages that may be offered in the matter of price and delivery by different dealers. There will be keen competition among manufacturers throughout the world to secure orders, and the purchaser will be able, without sacrifice of quality, to accept tenders which will be the lowest practicable. Excessive expenditure will thus be avoided.

Foreign commodities required for the Indian Government are manufactured in Europe and America. It was therefore considered convenient to arrange to buy them in the biggest commercial centre of the world, namely, London. The Government naturally required an agent and a representative to act on their behalf and in accordance with their instructions, in that city. To him could be sent periodic lists of requirements, and he was expected to procure the necessary articles on the most favourable terms. It would appear to be only in the fitness of things that this agent should be entirely a servant of the Indian Government, subject to their mandates and an instrument of their will.

But the actual practice developed differently. The Secretary of State and his office are located in London. He is the head of the Indian Government and is in close and constant touch with their important activities and problems. He took over the work of purveying to the needs of his Indian subordinates. Whenever the latter desired to have particular articles, they were asked to communicate with the Secretary of State. He undertook to perform all the agency functions on their behalf, and to make available to them the different kinds of goods for which they had indented.

The institution of such a system was very unfortunate from the Indian point of view. The Secretary of State is the political superior of the Government of India. His actions and orders cannot be questioned by the latter, who have to carry them out loyally and ungrudgingly. The commercial agent of the Indian authorities thus turned out to be a master who dictated and not a servant who obeyed. He was not responsible to those whose money he had the opportunity to spend. On the contrary, he controlled their judgement and discretion and could direct their expenditure into particular channels. It was a highly anomalous position.

It must be further remembered that the British conquerors of India, unlike their predecessors, are also great captains of industry. They were the pioneers of the Industrial Revolution, and have energetically developed their industrial and commercial production. Now the prosperity and the very existence of an industry depend upon the unrestricted sale of the output. If the mass of commodities that it contributes is not quickly disposed of, the whole mechanism comes to a standstill. It is therefore of vital importance to all producing nations that they should capture markets to absorb their produce.

Britain was blessed by a fortunate coincidence in this respect. The development of its industry was accompanied and followed by the growth of its vast empire. Exactly when its capacity to put forth a huge quantity of manufactured articles had reached a respectable limit, it acquired immense areas which could serve as a lucrative field for commercial expansion. England's mastery over a richly endowed and thickly populated country like India was established at this very juncture. It was inconceivable in those days that the people of a conquered land could be allowed to govern themselves, and the British therefore assumed control over India's administration.

The Secretary of State is completely subordinate to the will of the British Parliament. The industrial and commercial magnates of England are strongly represented in that body, and naturally influence its decisions and policy to a very great

extent Nor can their attitude be purely disinterested and impartial As mighty producers, they will vigorously seek markets for the export of their commodities From the industrialist's point of view, England's political domination over India would offer great potentialities for establishing stable markets which would ensure prosperity to the British manufacturer

Influence of its industrial magnates The fear was often entertained that India's interests as a buyer were not safe in the hands of the Secretary of State It was suspected that he was successfully pressed to give preference to British goods at higher cost even when the same quality was available outside Britain at lower cost If this were so it inflicted unnecessary monetary loss on India and imposed a drain on its wealth for the benefit of the conqueror The position was exasperating to the Indian mind

The authorities in India, who were all Englishmen, would not be likely to feel the injustice so keenly But even if they did, they were powerless to prevent it They could not question the discretion of the Secretary of State The combination of the constitutional superior and the commercial agent was extremely awkward

§3 APPOINTMENT OF THE HIGH COMMISSIONER FOR INDIA

Appointment of the High Commissioner The definition of India's political goal in August 1917 and the introduction of the Montford reforms two years later created a new situation Those events were illustrative of a change in the angle of vision of the Englishman. The Crew Committee, which was appointed in 1919 to consider plans for the reorganization of the India Office, recommended a bold departure from a system which gave rise to suspicions in the Indian mind about the intentions and actions of the Secretary of State The self-governing Dominions of the British Empire appoint their own officers in London for the transaction of commercial and also political business. They are known as High Commissioners And by the Act of 1919, matters were set right, at least theoretically, by India being allowed to appoint its own High Commissioner

His status The High Commissioner for India and his office are stationed in London He is selected by the Governor-General-in-Council, and his salary is paid out of Indian revenues He is entirely a servant of the Government of India, amenable to their discipline and subject to their supervision and instruction The tenure of his office is usually five years The office was generally held till recently by very senior and very highly placed members of the Civil Service like executive

councillors of the Governor-General. The tendency now is to select prominent non-officials to hold it.

The High Commissioner has to perform all those agency functions for the Government of India which were formerly performed by the Secretary of State. It is his principal duty to procure for them and for the Provincial Governments all those articles which they are required to import from abroad. He is expected to invite tenders for the supply of goods from all the important producing countries and to secure the lowest competitive prices. Irrespective of political or any other kind of pressure that may be exerted on him from outside, his insistence must be exclusively on India's gain and India's benefit. The High Commissioner is also entrusted with certain minor duties like looking after the welfare of Indian students who are prosecuting their studies in England.

§4 PRACTICAL RESULTS

How far has the primary purpose of the creation of the new office been fulfilled? To what extent has the High Commissioner been able to safeguard India's national interests? Are all his purchases invariably confined, and allowed to be confined, to the cheapest markets? Or is he required to observe some kind of preferential discrimination in favour of British and Empire products? These are inevitable questions. If they could be answered satisfactorily, the appointment of the High Commissioner could be justified and welcomed on practical as well as theoretical grounds. Unfortunately, all the statistical and other data on which alone a definite answer to all these questions can be based are not easily accessible to the public.

It is necessary to emphasize that the Government of India is an alien bureaucracy. It does not symbolize the Indian people. In such an undemocratic system, the rulers and the ruled are not really equated. In fact, they are likely to be in conflict with each other on major issues. The outlook of foreign rulers cannot always be identical with the hopes and ambitions of those over whom they rule. Their interests may often prove to be mutually incompatible. The British bureaucracy is naturally eager to support British industry and British trade. A High Commissioner who is entirely its servant would hardly find it feasible to disregard its inclinations. The exercise of a purely bureaucratic authority cannot possess the full connotation of popular control.

Matters stand differently with the Dominions. There is no artificial gulf separating their Governments from their peoples. Their High Commissioners staying in London have come to

acquire a unique prestige. They function not only as the commercial agents but, for all practical purposes, as the ambassadors of the Dominions in the mother country. They are stationed as the representatives of their people in the imperial capital. Consultations on imperial issues are held through them. They serve as the channel of communication between the daughter countries and the British nation. Usually, they are first-rate politicians who have been leaders of public opinion in their country and have occupied high ministerial office.

§5 CHANGES MADE BY THE ACT OF 1935

The Act of 1935 contains an important clause concerning the High Commissioner for India. Section 302 provides that he shall be appointed, and his salary and conditions of service shall be prescribed, by the Governor-General exercising his individual judgement. He has to perform such functions as the Governor-General may from time to time direct. The authority of the Government of India, as represented by the Governor-General-in-Council, and as exercised at present, is thus substituted by the authority of its individual head.

The change is apparently insignificant, but it may prove to be very far-reaching in practice. It is typical of the process of neutralizing the grant of power by the imposition of restrictions which characterizes the scheme of the Act of 1935. The declared object of that measure is to transfer political power to the hands of Indians. Therefore the principle of responsible government is to be introduced even at the centre. And yet, though the bureaucratic executive councillors will be transformed into responsible Indian Ministers, the Indian Ministers' political powers are curtailed in that the Indian High Commissioner will not be nominated to hold office by them nor will he be subordinate to their mandates. At the most, the Ministers may expect to be consulted before the Governor-General takes any action in the exercise of his individual judgement.

In fact, India's agent in London may not be absolutely beyond the direction and control of the Secretary of State. The Governor-General, when exercising his individual judgement, is required to act under the superintendence of that supreme Parliamentary head. The very object and purpose of creating the office of Indian High Commissioner may therefore stand in danger of being frustrated. He will be far removed, and even sheltered, from popular control, as exercised by and through an elected legislature. Nor can he acquire that imperial status and importance which the High Commissioners of the self-governing Dominions have been naturally able to achieve.

X. PARLIAMENT AND INDIA

§1 THE LEGAL POSITION

THE sovereignty of the British Crown and Parliament over the Indian Empire was established by right of conquest

Sovereignty of the Crown and Parliament In strict legal theory, there are no restrictions or limitations on that sovereignty. The form of the Indian constitution is determined by Parliament. The daily routine of its operation is controlled by Parliament's representative and servant, the Secretary of State for India. Parliament can interfere as freely and frequently as it wills in the affairs of India. The political, the economic and even the cultural destiny of the country can be shaped and moulded by parliamentary command. The British democracy expresses itself through the British legislature. Therefore, the authority of the latter is considered to be absolute and complete.

Even during the life-time of the East India Company, this constitutional position was constantly asserted.

Control over East India Company The Company owed its very existence to a royal charter. Its powers were modified and extended, from time to time, by further issues of similar royal or parliamentary charters. At a later stage, Parliament began to appoint small committees of inquiry to scrutinize the details of the Company's activities. It also passed a number of Acts to regulate the method of Indian governance. Pitt's India Act of 1784 went one step further. It set up a Board of Control over the East India Company and thus created a regular department in England for supervising the administration of India from day to day. The President of this Board soon acquired the status of a Cabinet Minister.

The Company was abolished in 1858. Since then, the Secretary of State has been functioning on behalf of Parliament. As has been already explained, he is entirely subordinate to the latter's direction and will. It is true that the British democracy is not much interested in the administrative problems of a distant dependency. The indifference of the average Englishman to happenings in India is only equalled by his ignorance about the Indian territory and its people. Besides, the extent to which even the parliamentary masters actually dictate to their own subordinates has to be determined by considerations of practical wisdom. All the same, the fundamental constitutional relationship is beyond any doubt or dispute. The British Parliament, which represents the British nation, can pass any legislation

for India and can effectively control the whole machinery of its administration.

§2 RELAXATION OF PARLIAMENTARY CONTROL

However, there is another important consideration which materially affects such a purely legal concept. A definition which attributes unrestrained and absolute sovereignty to Parliament in all circumstances has no correspondence to reality. In respect of the Dominions, for instance, it is inapplicable and out of date, particularly after the enactment of the Statute of Westminster. The British Empire is described as a free association of equal partners and as a commonwealth of nations. Some of its most important constituents are fully self-governing and independent. In fact, no momentous decision affecting the Empire is taken by the British Parliament without the consent of the Dominions. It is therefore wrong to imagine that Parliament looks upon itself as an omnipotent sovereign which can claim and exact obedience from all its subjects across the seas.

India has not yet been privileged to be in the category of the Dominions. The Indian Government is not exclusively formed by the Indian people nor is it controlled by them. A bureaucracy which is ultimately responsible to the British Crown and Parliament but not to the Indian nation is specially recruited and commissioned to rule over India. It therefore follows that parliamentary authority in respect of Indian governance is not merely formal and nominal. It is real. Even the Act of 1919 brought about no derogation in either the Secretary of State's or Parliament's powers of control over the Government of India. It has been repeatedly emphasized by the British politician that Parliament must be the sole judge of the time and of the degree of each constitutional advance which India may be allowed to make.

Yet the intentions of Parliament about the political future of India were expressed in clear language in 1917. Mr. Montagu's famous pronouncement was made with the full concurrence and on behalf of all his Cabinet colleagues. It enunciated the ideal of responsible government for India, to be realized in gradual stages. The Act of 1919 was conceived as a perceptible step towards that distant ideal. The Act of 1935 is supposed to be leading in the same direction. It claims to inaugurate full provincial autonomy and also to incorporate the dyarchical principle in the structure of the all-India Federation whenever it is brought into existence.

The grant of political rights and privileges to India would necessarily imply the withdrawal of parliamentary control over

Indian affairs at least to the extent of that grant. If the transfer of power to Indians is to be genuine, **Diminution of Parliament's powers** Parliament cannot simultaneously retain that very power in its own possession. In the sphere in which India is allowed to enjoy the privilege of ruling over itself, the rule of an outside non-Indian authority like the British Parliament must obviously cease. When the central and provincial Governments in India become completely subordinate to representative Indian legislatures, the superintendence of a British Minister over those Governments will have to cease. The logic of such a situation is simple and unimpeachable. If India is permitted to govern itself, it cannot, at the same time, be governed by foreigners. Either the Indian or the Englishman, but not both together, can rule over the Indian continent.

The Montagu-Chelmsford Report contained a definite **Recommendations in the Montford Report** commendation pertaining to this question. It suggested that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament should be prepared to forgo the exercise of its own powers. That supreme body must set certain limits to its own authority if India's political advance is not to be a mere shadow. It would mean for Parliament a process of self-effacement from the Indian scene. But it must be deliberately pursued, *pari passu* with the development of responsible institutions in India. A progressive increase in India's political freedom would have to be automatically accompanied by a corresponding relaxation in supervision from Britain. In short, there must be progressive devolution of power to an Indian democracy.

However, no specific provision for curtailing the authority of Parliament or of the Secretary of State was included in the Act of 1919. Such a legal restraint is felt to be inconsistent with British constitutional traditions and is therefore repugnant to the British mind. But what was not effected by the letter of the law was sought to be achieved by the establishment of conventions. It is necessary to understand the peculiarities of parliamentary conventions and the manner in which they operate.

§3 THE ESTABLISHMENT OF CONVENTIONS

A convention is a dignified name for a custom, practice or tradition which commands general acceptance. **What is a convention?** The term has acquired almost a technical significance in the language of political science. A convention is not a law. It is not enacted by a legislature. Its violation is not followed by a judicial penalty. Yet, it can have the same force and prestige as a law. A nation, like an individual, may drift into a certain course of action and may get so accustomed to

its routine, that it would make every effort to maintain what has actually become a part of its normal life. Similarly, a people may voluntarily agree to abide by a certain code of conduct, and loyally carry out the agreement. It could be entirely a self-imposed obligation, not enforceable in law, but because of its invariable and general adoption, it becomes a vital element in social and political life.

Some of the most important political institutions of England are not known to the English statute book. They are evolved by and embodied in very strong conventions and traditions which are too firmly rooted in the country's life to be disturbed or dislocated lightly. The Cabinet system and responsible government of the parliamentary type have been the essence of British constitutional development during the last two centuries. They are the most outstanding contribution made by the British genius to political theory and practice. Yet neither the Cabinet nor the doctrine of responsibility were formulated by legislative enactment. They are part of the unwritten law of the land.

As no statutory restrictions were deemed feasible on the Secretary of State's powers, it was supposed that he would voluntarily accept limitations on his power. Two cases were clearly distinguished in practice and definite action was recommended for each one of them.

The Transferred provincial subjects were avowedly ministerial subjects. Parliament has delegated all control over them to provincial legislatures. These latter bodies were purposely democratized and made more representative in order that they should play their role properly in the scheme of responsible government. The retention of active parliamentary control over these matters was therefore an evident incongruity. Hence, it was prescribed by a rule made under the Act of 1919 that in respect of Transferred subjects the power of the Secretary of State to superintend and control should be strictly limited to the minimum. It should be exercised mainly for the purpose of safeguarding the administration of the central subjects and for deciding matters in dispute between two provinces.

The central subjects and the Reserved provincial subjects were in a different category. Here, the ultimate responsibility, legally speaking, was supposed to lie with Parliament. No relaxation of the Secretary of State's authority was therefore possible by the compilation of rules. But the spirit of the Montagu-Chelmsford Reforms could not be ignored. The Act of 1919 was stated to be the first instalment of the gift of political autonomy to India. It was admittedly a prelude to successive similar instalments, the final stage being the attainment of Dominion status. In these circumstances, the control of the Secretary of State

even in reserved provincial and in central subjects could not remain absolute and undiminished, as it had been before

It was therefore recommended that in these subjects also **The convention** there should be some delegation of financial and administrative authority to the Government of India and to the provinces. The adoption of a definite convention was strongly recommended for that purpose. Accordingly, the following undertaking was officially given, and it has since been recognized as a necessary feature of the working of the Indian Constitution. If on any matter of purely Indian interest, the executive governments in India and the Indian legislatures are in agreement, the Secretary of State and Parliament would not ordinarily interfere with the decisions arrived at in India, even if their views were opposed to that decision. Many party leaders of Britain have supported this promise.

§4 THE FISCAL AUTONOMY CONVENTION

One particular instance of the operation of such a convention and the application of the principle of non-interference was specifically mentioned by the **Fiscal questions** Joint Parliamentary Committee which reported on the Bill of 1919. The belief, it said, was widespread that India's fiscal policy was dictated from Whitehall and that it was intended to benefit Britain at the cost of India. The Committee felt that the entertainment of such a belief was quite undesirable. It therefore suggested that liberty should be granted to the Government of India to devise the tariff policy which seemed to them to be best fitted to India's needs, taking India to be an integral part of the British Empire.

Here also, the method of relaxing parliamentary authority was to be the institution of a suitable convention and not a limitation imposed by law. It was proposed that whenever the Indian Government and the Indian legislature agreed on fiscal questions, the Secretary of State and Parliament should not ordinarily interfere.

An important precedent in conformity with this recommendation was established only two years after the **Occasion for a precedent** introduction of the Montford Reforms. The conclusion of the Great War of 1914-18 was followed by a big trade slump and depression throughout the world. Industry was disorganized, production had to be curtailed, and incomes dwindled. The Government of India were faced with a grave financial situation. Their annual budgets presented a series of large deficits and their credit had gone very low. Heroic efforts had to be made to restore the equilibrium between income and expenditure. Higher taxation and ruthless retrenchment were the only effective remedies for preventing an ugly deterioration in the financial stability of the country.

The Government of India were therefore constrained to propose a drastic increase in the rates of customs duty levied on all articles imported into the Indian ports. The proposal was sanctioned by the Indian legislature. The British industrialist, however, was greatly perturbed by the whole scheme. A high tariff was bound to be protective in its effect, at least to a certain extent, even if the intention of its levy was only, to obtain revenue.

A deputation of Lancashire merchants therefore waited upon Mr Montagu, who was then the Secretary of State for India, and requested him to exercise his superior powers of control and veto to kill the Indian scheme. Mr Montagu's reply was unambiguous and emphatic. To him it was enough that the Government of India and the Indian legislature were agreed on the tariff issue. He made it clear to the Lancashire deputation that, in the light of the recommendations of the Joint Parliamentary Committee, he was unable to interfere in the matter of the new customs schedule that was proposed by the Government of India with the full concurrence of their legislature.

This was the first test of the genuineness of Parliament's pronoun and the right precedent was unequivocally established. Another Secretary of State, Mr Wedgwood Benn, who was a member of the Labour Government during 1929-31, endorsed the same policy. But even such declarations could be little more than a gesture of goodwill. They were marked by certain inherent limitations.

§5 DEFECTS OF THE METHOD OF CONVENTIONS

It is clear that the autonomy conferred by the method described in the foregoing pages could not have any great practical value. The convention which is intended to unlock the gates of India's fiscal freedom can only operate when certain essential conditions are fulfilled. And those conditions are difficult of fulfilment in the normal course of Indian administrative routine.

Thus, at the very outset it is declared indispensable that the Government of India and the Indian legislature must be in agreement with each other. The bare statement of such a requirement is sufficient to expose the inherent improbability of its satisfaction. The Government of India is an irresponsible alien bureaucracy. It is drawn from a conquering nation and reflects the views and interests of the British masters of India. The elected Indian legislature, on the other hand, reflects the aspirations and the distress of a subject people. It serves as a vehicle for the expression of the hopes and fears, the ambitions and the restless ferment, of a conquered country.

Those who are in the enjoyment of power are naturally bent on extending and perpetuating it. Those who are desirous of acquiring power are equally naturally keen on disputing the possession of that power by the present rulers. The aim of all political agitation in India has been the attainment of swaraj. The relations between the bureaucratic executive governments in India and the elected Indian legislatures have not been, and are not likely to be, marked by cordial harmony. A convention which presupposes agreement between two parties which are more likely to oppose than to agree with each other is an illusion. The precedent established by Mr Montagu was really too exceptional in the circumstances of its origin to be capable of frequent repetition.

Other difficulties have also been noticed in the working of the convention. The Indian legislatures as constituted by the Act of 1919 were not composed entirely of elected representatives. They contained a fairly large proportion of official members whose votes were directly commanded by the Government. There were also the nominated non-officials whose votes could be influenced by the official whips. The views of the legislature are evidently intended to be taken as an indication of Indian opinion in general. It was therefore argued, when the question of giving preferential treatment to British textiles came up before the Legislative Assembly in 1930 for discussion, that these official and nominated non-official members should abstain from voting whenever decisions are to be taken on controversial issues. However, the Government did not accept this interpretation of the procedure for ascertaining the legislature's wishes and have mobilized all their numerical strength on the floor of the house whenever important issues were to be decided.

Further, what is exactly connoted by the expression 'purely Indian interests', when India is considered to be an integral part of the British Empire? In the highly complex life of modern times, the interdependence of even independent nations is a striking phenomenon. Any step contemplated or adopted by one nation has its repercussions on the whole world. The economic and political self-assertion of India is bound to affect other parts of the Empire and also the mother country. In such a state of things, 'purely Indian interests' may be discovered to be but an elusive phantom.

The Indian public has not shown any enthusiasm for the method of conventions. They may work effectively in a free country like England, the growth of whose polity has been going on unhampered for centuries. But it is not easy to transplant traditions and all the psycho-

logical back-ground which creates them. One cannot help feeling sceptical about the efficacy of a convention which can deteriorate into a personal idiosyncrasy of the Secretary of State or become the play of party forces in a foreign democracy. The foundations of India's fiscal and political autonomy must be more solid and abiding

§6. THE POSITION AFTER THE ACT OF 1935

What is the nature of parliamentary control over Indian affairs since the Act of 1935? What will be the position of Parliament *vis-à-vis* the Federation of India when the latter comes to be inaugurated in accordance with the provisions of that Act? Will there still be need for the enunciation of conventions or has autonomy been conferred on India in a more direct form? These are pertinent and interesting questions and require to be examined closely

The Joint Parliamentary Committee which reported on the Bill in 1934 gave its opinion that with the passing of the new Act, the existing convention will necessarily lapse and that the federal legislature will enjoy complete fiscal freedom. However, they were also emphatic in stating that this freedom could not be utilized for the purpose of injuring and excluding British trade. They therefore recommended that all doubts in the matter should be completely removed by the inclusion of a definite item in the Special Responsibilities of the Governor-General and by its further amplification in the Instrument of Instructions to him

Accordingly, section 12 of the Act which defines the Special Responsibilities of the Governor-General contains the following clauses: "The prevention of action which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment." A whole chapter of the Act—sections 111-21—is also specially devoted to an elaboration of the same point. The explanatory comment of the Joint Parliamentary Committee gives a clear idea of the intentions of Parliament

"The imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian legislature to develop their own fiscal and economic policy, they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions. It will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intentions of the policy con-

templated is to subject the trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. The 'discriminatory or penal' treatment covered by this special responsibility includes both direct discrimination and indirect discrimination. In all these respects the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

The United Kingdom and India must approach their trade

The concept of reciprocity problem in a spirit of reciprocity, which views the trade between the two countries as a whole.

The reciprocity consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception does not preclude either partner from entering into special agreements with third countries, but it does imply that when either partner is considering to what extent it can offer special advantages to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.¹

This exposition clearly shows that the fiscal autonomy which will be conferred upon the future Federation of India will not be unrestricted and absolute as in the case of the Dominions. It will be linked up with, and limited by, the doctrine of reciprocity with Britain. The implications and the obligations imposed by this doctrine have been elaborated in very wide terms. It is intended to apply not only to individual contracts for the import and export of particular commodities but will comprehend the whole range of relationship between England and India. The important aspects and consequences of such a position need to be explained at some length.

The concept of reciprocity implies a voluntary agreement between two nations. Each must be free to decide what will be most beneficial to itself and in the light of that conviction to enter into specific contracts with the other. The terms of the contract must be willingly accepted by both the parties. There is no room for compulsion or force in such an arrangement. It is entirely the result of friendly negotiations and discussions in pursuit of a common purpose. A country's participation in a scheme embodying this principle presupposes complete freedom from outside control. And as long as that freedom is not predicated for India, reciprocity is only a euphemism for British dictation.

¹ Report of the Joint Parliamentary Committee, pp. 205-6

Section 12 of the Government of India Act makes it clear that in matters where a special responsibility of the Governor-General is involved, he has to act in the exercise of his individual judgement. Section 14 further adds that whenever he exercises his individual judgement, he will be under the general control and direction of the Secretary of State. The results of this closely woven chain of constitutional definition can be easily imagined. Under its inhibitory action, the fiscal 'autonomy' of India may be conditioned by the personal prejudices of British politicians and the odd movements of opinion in the British democracy. That was the defect of the old method of conventions, and it may continue to exist even under the new federal scheme.

The line of demarcation between what is described as the legitimate ideal of fostering Indian interests and the mischievous desire to harm British trade will necessarily be very ambiguous and uncertain. So far as mere results are concerned, the two policies may at times even shade off into each other. Any effective protection devised in furtherance of India's industrial advancement will be intended to be, and will actually be, a distinct handicap to the foreign producer.

It is the Governor-General who is empowered to judge the Indian motive and put a correct interpretation on the Indian objective and will. It is a matter of ordinary experience that to reach a proper verdict even on easily ascertainable facts is difficult enough. A verdict on the intangible and mysterious complex of inner motives is, of course, much more difficult, and any definite judgement on them would inevitably tend to be more subjective than detached. It must be remembered that the British Governor-General who will play the role of final judge in fiscal matters cannot help being solicitous about the welfare and prosperity of his motherland. His attitude and actions are bound to be influenced by the opinions of his people. It is therefore difficult for the Indian to feel assured of his impartiality, at least so long as the office of Viceroy is not held by Indians.

There is another aspect of this question which deserves attention. Apart from the purely legal position in such matters, action taken on particular occasions and precedents established in the actual working of the constitutional machine are of the highest importance. They determine, to a great extent, the shape of the living reality. Interpretations and conventions will play a decisive part in the early stages of the operation of the Act of 1935. It is therefore desirable to refer here to the reply which Mr Neville Chamberlain, the British Premier, gave in the House of Commons in June 1937 to Mr Churchill's question regarding

the limits within which questions relating to events in India may be answered in Parliament.

Mr Chamberlain said that as long as the Federation of India is not brought into existence and the Transitional Provisions of the Act of 1935 continue to operate, the Governor-General-in-Council remains responsible, through the Secretary of State for India, to Parliament, and therefore questions and answers about the affairs of the Central Government could be asked and given in Parliament as before.

In respect of Provincial Governments he said that, as far as the Ministers responsible to the provincial legislatures for the government of the provinces are concerned, it will be entirely inappropriate if the House of Commons were to call in question or criticize by question and answer their policies and activities. The Secretary of State has in fact no longer any responsibility in matters within the control of the provincial Ministers.

On the other hand, in the exercise of his special powers the Governor is responsible to the Governor-General and through him to the Secretary of State. Therefore, in the Premier's view, questions in Parliament on Provincial affairs ought not now to be regarded in order unless it is shown that either the action at issue has been taken by the Governor without consulting the Ministers or against their advice or, in the alternative, that the Governor is in possession of powers applicable to a case which he has failed to exercise.

Mr Chamberlain also suggested that even this right ought to be used with discretion and restraint and that His Majesty's Government must themselves exercise careful discretion regarding the extent to which it is expedient in any given case to supply information about facts and events in an Indian province. Unless the new distribution of responsibilities is frankly recognized, provincial self-government in India cannot work and work well.

This view has generally prevailed and the ministerial side of provincial administrations is no longer subject to the supervision and control of the authorities in the United Kingdom.

PART III

THE CENTRAL GOVERNMENT TODAY

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XI. CENTRAL AND PROVINCIAL GOVERNMENTS AND THE FUNCTIONS OF GOVERNMENT

§1. DISTINCTION BETWEEN CENTRAL AND PROVINCIAL GOVERNMENTS

INDIA is a very large country, both in respect of area and in respect of the number of its inhabitants. It is not possible to rule over its immense expanse from a single headquarters, however central its location. A single unified official agency cannot adequately meet the requirements of a huge and diverse population of over thirty crores of human beings. For the purposes of governance, it must be, and actually is, divided into several territorial units. The formation of these divisions has been governed partly by historical forces and partly by considerations of race, language, culture, and convenience.

Every territorial sub-division, known as a presidency or a province, has a government established in and for it. The jurisdiction of these governments is strictly limited to the provincial sphere, as understood both in the geographical and in the political sense. The range and bounds of this sphere are definitely marked. All provinces stand on a level of equality in relation to each other and no one province is allowed to trespass upon the rights and interests of another. An administrative system of the same pattern and embodying the same essentials is provided for every province, though there may be differences of detail to suit local conditions.

At the head of all the provinces stands the largest entity known as the Government of India. It has a distinct sphere of its own, and in several important matters its authority extends to the whole country. The subjects that it manages—for example, defence, customs, posts and telegraphs, railways, etc.—have a vital bearing on all parts and people of the land. It is invested with wide powers of supervision and control, because it is intended to serve as the superior all-India authority.

The Government of India, as the Central Government of the country, personifies the unity of India while the Provincial Governments represent its diversity. The former deals with problems which concern the whole nation. The latter are placed in charge of subjects which can best be managed by the different parts. For clarity of exposition, it is convenient to separate the two entities and to describe each in detail. The links that connect them and help to co-ordinate their various activities have also to be properly grasped. Accordingly, this

part of the present work will be devoted to a description of the rise and growth of the Central Government and its present working.

§2 THREEFOLD DIVISION OF GOVERNMENTAL FUNCTIONS

Writers on political science have classified the functions of government in three broad categories, and even an ordinary citizen can easily distinguish between them from everyday personal knowledge. They are not of course entirely watertight compartments, but they correctly indicate the different phases of organized social activity. Thus, a government has to (i) frame laws adequately and properly, (ii) carry out laws effectively and honestly, and (iii) interpret laws and examine their application in a spirit of justice and progress.

A threefold mechanism is usually provided in a modern state for the performance of this threefold duty, the Legislature, the Ministers, and the Judicature. These institutions are formed on certain definite principles and are closely woven in the fabric of national life.

It is generally agreed that the Legislature ought to be a large and representative body, because it is empowered to pass laws which may affect all and which have to be obeyed by all. In determining ideals and policies and prescribing general restrictions, it is appropriate that full scope should be given for the expression of the public will and the divergent view-points that it may include.

On the other hand, the Executive, which is concerned not with deliberation but with action, must be a small, talented, disciplined and compact body. If the governmental machine is to move with speed and vigour and if a high level of administrative efficiency has to be attained, it is necessary to collect a small number of trained experts and entrust them with the task of managing routine affairs.

Different considerations prevail in the composition of the Judiciary. The judge is the guardian of civic privileges, liberties and rights. Particular care must therefore be taken to see that the judicial authority is constituted by persons who are learned, fearless and impartial, and whose integrity is above suspicion.

The study of government ultimately resolves itself into a study of these three constitutional and administrative instruments. Their form and their powers require close attention. Each has to be treated as an independent subject for investigation and comment. Then an attempt will have to be made to elucidate the manner in which they stand related to each other.

That is the main scheme of the following chapters. The Central and Provincial Governments will be studied as two

separate entities. In the study of each, the executive and the legislative aspects will be distinguished from each other and explained at length in separate chapters. Then an account will be given of their mutual relations. The Federal Court and the provincial judicature will be described separately in their appropriate places.

XII THE CENTRAL EXECUTIVE: THE GOVERNOR-GENERAL AND CROWN'S REPRESENTATIVE

§1 THE NEW CONSTITUTION NOT YET EFFECTIVE

Changes made by the Act of 1935 The Act of 1935 has proposed certain radical changes in the structure of the Government of India. The present unitary system will be transformed into a federation. The Indian States will be associated for the first time with British India in the formation of an all-India polity. The principle of responsibility will be introduced to a certain extent in the working of the central executive. The central legislature also will be considerably reshaped in consistence with the federal doctrine.

However, for various reasons, this part of the Act was not made operative simultaneously with the introduction of provincial autonomy. **They are to be introduced later** The legislative skeleton of the Indian Federation has been provided by the Act, but it has yet to be quickened into life. The Viceroy did make efforts to hasten the advent of the federal system. He sent special emissaries to hold consultations with the Indian Princes and to assist them in overcoming their difficulties in joining the new arrangement. But another decisive event soon intervened to stop discussion of this constitutional issue. In September 1939 England declared war on Germany, and since then the whole of the British Empire has been engaged in a struggle of the greatest magnitude. It was decided that during the currency of the war the introduction of the federal scheme should be suspended. It is even probable that in view of the severe criticism to which the scheme has been subjected in India, it will be reconsidered at the end of the war and materially modified in many respects.

As long as the new Act does not come into force in this particular respect, the constitution of the Government of India as framed by the Act of 1919 but with certain necessary modifications will continue to function. **The present constitution** It has been incorporated in the Transitional Provisions contained in Part XIII and the Ninth Schedule of the Act of 1935. The following pages therefore describe at length the unitary Central Government which is still actively functioning but which may be superseded by a federal structure at some future date. In a subsequent part, a glimpse is given of the future as it is likely to be if and when the Federation of India is actually brought into existence.

§2. THE GOVERNOR-GENERAL AND THE EXECUTIVE COUNCIL

The executive side of the Central Government is composed of the Governor-General of India and his Executive Council. They are inseparably linked with each other and must work as a homogeneous body.

But the Governor-General is so dominant in the Indian constitutional picture, that it becomes necessary to study in detail all the lines and colours of his individual portrait which is included in that larger picture. He is not merely the part of a whole but, in a diminutive measure, himself constitutes a whole.

For purposes of explanation, therefore, the executive side of the Government of India is split up into two parts. One deals with the head of that Government and the other is devoted to a description of his Council.

§3 HISTORY OF THE GOVERNOR-GENERAL'S OFFICE

As the East India Company was originally started as a commercial corporation with the object of carrying on trade in eastern waters, it was not found necessary to provide for the appointment of any official like the Governor-General. Its territorial possessions during the period were limited to small areas on the western and eastern coasts of India on which its factories and warehouses were situated and which had been purchased or rented from Indian proprietors. These possessions were necessary accidents of trade, and had no political character whatever. Bombay on the west coast and Calcutta and Madras on the east coast were the chief trading centres.

The Charter Act of 1661 allowed the appointment of a Governor or President in each of the trading centres. He was assisted by a Council consisting of from twelve to sixteen subordinate officials who were chosen to constitute the Council according to seniority. The authority of the Governors or Presidents-in-Council spread over their respective zones, that is to say, over the Company's western, eastern and north-eastern possessions in India. The three Presidencies of Bombay, Madras and Bengal were independent of each other and had an equal status. All of them, however, were subordinate to the Company's Directorate in London and had to carry out their orders and mandates. The Company's business was simple and of a purely commercial character. There was therefore no special necessity to appoint a superior official on the spot in India to co-ordinate and control the affairs of the three Presidencies.

• Circumstances were, however, gradually changing. The

magnificent Mogul Empire had passed its allotted span of life, and the chapter of its existence was coming to a close. Anarchical elements began to get the upper hand in many parts of the country, and as the imperial authority was too debilitated to grant any effective protection the Company felt compelled to take into their own hands the task of self-preservation. The necessity proved to be congenial to the more militant section of the Company's officials. The justification of self-defence could now be pleaded for their attempts at aggrandizement. The factories began to be fortified into fortresses. The Company began to enlist armies, to weave diplomatic webs, to fight wars and to acquire territories. In short, it initiated the experiment of empire-building in India. The management of its affairs had to respond to all the implications of this curious complex of inevitability and ambition.

The requirements of a political and military career were obviously more complicated and onerous than those of trade. The necessity of governance created new responsibilities which had to be carried out successfully. It became desirable to co-ordinate the Company's activities and resources in different parts of the Indian continent. Their efforts required unity of direction and command in order that they should not be dissipated in a large number of fruitless adventures. A sense of oneness had to be inculcated among all the servants of the Company and coherence had to be given to their actions. The old independence of the three Presidencies, with their narrow insular outlook, had to give place to a greater degree of solidarity in administration and policy.

The Regulating Act of 1773 gave the impulse towards unification by making the Governor of Bengal the Governor-General of Bengal, who with his Council was given power to superintend and control the government and management of the three Presidencies of Madras, Bombay and Bengal.

Henceforth it was not lawful for the Governments of the minor Presidencies 'to make any orders for commencing hostilities or declaring or making war or for negotiating or concluding any treaty, without the previous consent of the Governor-General and Council' except in circumstances of imminent necessity. Intelligence of all transactions in the provinces relating to the government, revenues or interests of the Company was to be constantly transmitted to the Governor General.

The establishment of such a central authority was an innovation. The provinces or Presidencies had not been accustomed to the direct control of a superior in the past and it took some time before the unfamiliar could be properly assimilated. In spite of the provision of the Regulating Act, the Provincial

Governments continued to take important decisive steps which involved the Company in the currents and cross-currents of contemporary Indian polity without any reference to or sanction from the Governor-General. This defiant insubordination of theirs, which was not redeemed by successful results, plunged Warren Hastings into embarrassments and complications from which he could not easily escape. It is said by his supporters that he had to expiate many sins which had been committed not by him but by the unruly and unwise provincial Presidents.

This unsatisfactory state of things, which gave an air of unreality to a definite and deliberate provision of an **Pitt's India Act, 1784** Act of Parliament, could not continue long. A special clause was inserted in Pitt's India Act to emphasize and enlarge the Governor-General's supreme power and control over the minor Presidencies in all matters of war and peace and administration. After this Act and during the administration of strong-willed rulers like Cornwallis and Wellesley this defective state of things completely disappeared. Henceforth the Governor-General-in-Council of Bengal came to be acknowledged as the head of all the Company's dominions and administration in India.

With the practical completion of the conquest of the Indian continent the designation of the Governor General of Bengal became a misnomer. It was therefore changed to Governor-General of India by the Charter Act of 1833. The Governor-General-in-Council was vested with the 'superintendence, direction, and the control of the whole civil and military Government' in India. He continued to administer directly the Presidency of Bengal.

The Act of 1854 relieved the Governor-General of this last burden, which was transferred to the newly created office of the Lieutenant-Governor of Bengal. The **The Act of 1854** same Act also empowered the Governor-General-in-Council, with the sanction of the Home authorities, to 'take by proclamation under his immediate authority and management any part of the territories for the time being in possession of or under the government of the East India Company' and then give all necessary orders for its administration. The mode in which this power was exercised in practice was by the appointment of officials called Chief Commissioners. To these officials the Governor-General delegated such powers as could be delegated. In this way were established Chief Commissionerships for Assam, Burma, the Central Provinces, etc. Technically territories under the administration of the Chief Commissioners were under the immediate authority and management of the Governor-General-in-Council. This measure had become necessary on account of the ever-increasing additions to British dominion and the consequent necessity to make suitable arrangements for their administration.

On the abolition of the East India Company after the cataclysm of the Indian Mutiny in 1857, the Government of India was directly taken over by the English Crown and Parliament. In announcing the assumption of the Government of India by the Crown of England in the famous Proclamation of 1858, Queen Victoria referred to Lord Canning, Governor-General designate, as the first Viceroy and Governor-General. Strictly speaking the word 'Viceroy' is unknown to any of the statutory enactments and therefore to the letter of the constitution. Nevertheless it is freely used in practice. It describes the new exalted status which the Governor-General acquired, when, in addition to being the head of the Indian administration, he also began to represent and personify the Crown in the inevitable absence of the king from his possessions. This high position continues to be enjoyed by him till the present day.

§4 APPOINTMENT, QUALIFICATIONS AND TENURE

The Governor-General is appointed by His Majesty, acting on the advice of his Prime Minister. **Appointment and qualifications** Nomination to this high office evidently cannot be determined only by academic or professional merits. But there are certain well-understood tests which must be fulfilled by the person who is selected. The Governor-General is invariably picked from the British aristocracy and often possesses high family connexions. He is a man of social status who has played a prominent part in British public life. Usually, he has made his mark as administrator, statesman or politician before he is invited to go out to India as Viceroy. Generally he has ample parliamentary experience to his credit. Many holders of the Viceregal office have previously risen to the position of Cabinet Ministers. The training and culture of such scions of noble houses is supposed to impart to them a robust freshness of outlook and a broad, sympathetic vision, which are particularly valuable assets to the head of a state.

The office of Governor-General is essentially a non-party **A non-party office** office. The dignitary who holds it does not change with a change of ministry in England. Continuity of executive government and freedom from the disturbing effects of purely artificial fluctuations are ensured by this salutary practice. In recent years, Lord Reading served under three different ministries and Lord Irwin (now Lord Halifax) served under two. Acute political differences with a new Secretary of State, who may have come into office after a dissolution of Parliament and fresh elections, may sometimes precipitate the resignation of a Governor-General, but such instances are very rare. Thanks to the high standard of British political sagacity

and public morals, the Government of India is not allowed to be turned into a shuttle-cock for the sport of the party leaders of Great Britain. The Indian question is always declared to be a question above party. There always seems to be a general consensus of opinion among British politicians of all schools of thought about the policy which the British should adopt towards India.

Till the passing of the Leave of Absence Act in 1924, the **Tenure and leave** Governor-General, the Governors and the Executive Councillors were not entitled to any leave of absence outside India. If they had to leave the country for any reason they were required to relinquish their office. The Act of 1924 has now been repealed but its clauses have been incorporated in the Transitional Provisions of the Act of 1935. According to them, the Secretary of State may grant to the Governor-General leave of absence from India for urgent reasons of public interest or of health or of private affairs. The period of such leave is not to exceed four months and it is not to be granted more than once during the tenure of office. Suitable leave allowances are provided for under the rules made by the Secretary of State.

§5 RELATIONS WITH THE EXECUTIVE COUNCIL

The duties and powers of the Governor-General are numerous and varied. He is the head of the Indian administration and the highest official in the land. He, together with his Executive Council, is entrusted with the task of maintaining peace, order and good government in India. **He regulates the work of the Council**

The Governor-General is the President of his Executive Council and has power to nominate a vice-president from among its members to preside in his absence. He has power to make rules and regulations for conducting the meetings of the Executive Council. He distributes work among its different members. In case of an equality of votes in the Council on any question, he can give a casting vote.

He exercises general supervision over the work of the Executive Councillors and can make himself closely acquainted with the details of departmental administration, either directly from the members or from their immediate subordinates, the Secretaries. These officers enjoy a unique and anomalous constitutional position. They have direct access to the Viceroy over the heads of their immediate superiors.

In the selection of members to the Executive Council, the **His patronage** opinion and influence of the Governor-General count for a great deal. His recommendations in the matter are generally accepted by the higher authorities. He has also

the power of appointing Governors of provinces other than Bombay, Madras and Bengal. A large amount of important patronage is thus in his hands. This factor is not particularly favourable to the growth of that spirit of independence in the Executive Council which is found to be a characteristic feature of the British Cabinet.

Till very recently, there was another significant difference between the two institutions. Members of the British Cabinet are not life-long bureaucratic servants. They are men who follow different professions and may be lawyers, doctors, industrialists, traders, aristocrats and even labourers. They are not expected to be experts in the administrative sphere. They find a place in the Cabinet because they are the leaders of Parliament and, in the last instance, of the nation.

On the other hand, before the expansion of the Executive Council of the Governor-General in October 1941, that body was composed to a large extent of bureaucratic officials. Membership of it was the prize earned at the end of prolonged service in the different departments of government. To rise to the heights of an executive councillorship was the life-long ambition of every civilian. To discover administrative talent and to reward it by the conferment of that exalted office was the objective of those who control the Indian bureaucracy.

Thus, in the fundamentals of its composition and outlook, its attitude the Indian Executive Council differed from the British Cabinet. The former was naturally more susceptible to superior control. Its members were more subdued in their opposition to the Governor-General when they disagreed with him. There was an atmosphere of discipline and submission in the usual routine of its working. It is otherwise with the British Cabinet, which has more decided traditions of equality and independence. It is hoped that the atmosphere of the newly expanded Executive Council with its larger number of Indians and of non-officials will be more akin to parliamentary traditions.

The Governor-General of India can, indeed, be technically described as only one among several members of the Executive Council. He has an additional or casting vote in case of a tie. Except on rare occasions on which he chooses to exercise his emergency powers, he might give the impression of being only first among equals. However, the president of the Executive Council is also the Governor-General and Viceroy, and the ramifications of this combination are extremely formidable.

Warren Hastings was very unfortunate in his relations with the Executive Council. Some of its members adopted an attitude of implacable hostility to him. Their reckless obstructio

demoralized the whole administrative machinery and created un-
Power of seemingly deadlocks. Cornwallis became wiser by
overriding the sad experience of his predecessor. Before he
the Council accepted the office of Governor-General, he made
 the important stipulation that the Governor-General should be
 vested with power to overrule the whole or part of his Council
 whenever he is convinced of the futility and harmful nature of
 its opinion. The demand was granted and Parliament passed
 a special Act in 1786 to that effect.

Ordinarily, every measure brought before the Executive
its excep- Council requires the assent of the majority of its
tional use members in order that it should be passed. It may
 be that the Viceroy finds himself out-voted on occasions. Nor-
 mally, he submits to the wishes of the majority. But he has
 the exceptional power of overriding and setting aside its deci-
 sions. This power is indeed very rarely used. In fact, since
 its creation, it has been used only once, in 1879, by Lord Lytton
 to reduce the cotton duties. But its mere presence is enough to
 chasten any particular petulance on the part of the Executive
 Council.

In a constitution like that of Britain, an internal conflict
The British in the executive will be shifted to Parliament and
practice finally to the nation. A serious dispute cannot
 be confined to the Cabinet. The issue will be determined ulti-
 mately by national vote. Therefore, it is not necessary to equip
 the executive with any extraordinary overriding power.

§6 RELATIONS WITH THE LEGISLATURE

The Governor-General has considerable powers with refer-
His powers ence to the legislature. Up to the Reforms of
over the 1919, he was the *ex officio* president of the Im-
legislature perial Legislative Council. After the introduction
 of the Montford Reforms he ceased to have that privilege,
 though he still has many powers over the legislature. He can
 address both the legislative chambers, he summons prorogues
 and dissolves them, he can extend the period of their tenure
 in special circumstances. He appoints a date and place to hold
 fresh elections, and also a date and place for holding sessions
 of either chamber.

No measure affecting subjects like the public debt or the
 revenues of India, religious rites and usages of British subjects,
 discipline of the army, foreign relations, provincial subjects and
 provincial laws, can be introduced in any of the legislative bodies
 of India without the Governor-General's previous assent. He
 can stop the proceedings of any of the chambers on any Bill,
 clause or amendment, if he feels that the discussion is likely to
 affect the safety and the tranquillity of the Raj. He can send
 Bills back for reconsideration by the legislature. His assent is

required for all Bills passed by the legislature before they can have the force of law. This is true of central as well as provincial legislation. He can require certain Bills falling within the provincial sphere to be reserved for his consideration or for the consideration of His Majesty-in-Council.

In addition to these more or less routine powers which the **Certification** head of an administration must possess, an exceptional overriding veto against the decisions of the legislature was bestowed upon the Governor-General of India by the Act of 1919. This weapon was forged on the anvil of the Montford Reforms. It corresponds to a similar veto possessed by him against the Executive Council. 'Where either chamber refuses leave to introduce or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India', and thereupon, even if the legislative chambers refuse to pass such a Bill, it can become an Act by the mere signature of the Governor-General. A grave constitutional anomaly was thus created. A single head of the administration was empowered to defy the opinion of an elected legislature.

The inclusion of such a provision in a 'Reforms' scheme testified to the imperfect and transitional character of the **Transitional** Reforms. Mr Montagu and Parliament did not intend that the Government of India should be made fully and wholly responsible to the Indian people. But they were equally emphatic in holding that it could not continue to be as thoroughly irresponsible and bureaucratic as it was before the War. They therefore evolved a peculiar plan. It attempted to combine two systems which are inherently incompatible. The legislatures were materially increased in size and were made more democratic and representative. Larger powers were conferred upon them. They were to be the agency for the enactment of all laws. A part of the budget was made subject to their vote and they were thus called upon to supply a small portion of the resources of the State. Yet the executive was to be in no sense subordinate to the legislature. It was to continue to be responsible only to the extra-territorial sovereignty of an absentee Parliament functioning in a distant country.

The severe logic of such an incongruous blend of conflicting **Avoiding** constitutional principles is self-evident. A serious **deadlocks** difference of opinion between the two vital parts of government may lead to a complete deadlock and bring the whole machinery to a standstill. An effective authority has to be provided to bring such an impasse to an end. But, as the executive is ultimately responsible to Parliament and not to the Indian legislature, it must be enabled, if necessary, to

assert itself against the latter, for the liquidation of those responsibilities. Given the hypothesis that full political freedom is not to be bestowed upon India, the deduction drawn above is unavoidable. The irresponsible executive must be also a superior force in the country's governance.

That certification is meant to be a real power and not a mere ornamental possession is amply proved by experience. It appears to have been interpreted as a normal instrument which can be freely used from day to day. Yet a constant exercise of such a power cannot fail to prove irritating to Indian thought and exciting to Indian sentiment. The goal of British policy in India is stated to be the development of responsible government in all its fulness at an early date. Therefore, the greatest restraint must be observed in making use of extraordinary powers. The freedom of judgement and discretion enjoyed by a single individual, whether the Governor-General or Governor, must be definitely circumscribed and limited. A democratic appearance alone is not enough; the reality of popular control is infinitely more important.

Besides possessing these powers, the Governor-General is also authorized to make and promulgate ordinances for the peace and good government of British India or any part thereof. An ordinance so made has the force of law as much as if it were an Act passed by the legislature. The period of its application is not to exceed six months at a time, though it can be renewed for a further succession of such periods. An ordinance is thus a legislative measure, partaking of the character of an Act, but emerging from the head of the executive in his executive capacity. It is of course intended to be very rarely used. When the legislature is not in session and a great emergency suddenly arises, remedial measures can be immediately adopted by the exercise of such reserve powers. The recent Civil Disobedience Movement is inseparably associated in the public mind with the promulgation of a large number of ordinances by the Governor-General.

§7 STATUS AS VICEROY AND CROWN'S REPRESENTATIVE

The Governor-General of India is not only the head of the administration of the land. Over and above that, he personifies in himself the British sovereign and represents his master in the unavoidable absence of the latter from the land of his governance. He therefore enjoys all the dignity and prestige and special privileges which the sovereign himself would enjoy if he chose to stay in India. He has the prerogative of mercy and pardon. On behalf of his sovereign, he receives homage from the Indian princes. To

them, he symbolizes the Crown and all the unlimited sovereignty of the Crown. The emphatic declarations of Lord Reading in his communication to the Nizam are significant of the same point. The Governor-General represents His Majesty in his dealings with foreign princes. All the grandeur of royalty attaches to him as his master's deputy. The sense of detachment that pervades the environment of kingship, also pervades, to a certain extent, the environment of the accredited vicegerent of that kingship.

Till the Act of 1935, though the Governor-General was thus functioning as the representative of the Crown, the **The Crown's Representative** two offices as such were not legally separate from each other. The Governor-General became *ipso facto* the agent and deputy of the Crown. The Act of 1935 has introduced an important change. It has created a new official post the occupant of which is designated as the Crown's Representative as distinguished from the Governor-General of India. It is only this Representative or persons acting under his authority that can exercise in India the functions and powers of the Crown in its relation to the Indian States. The Governor-General will continue to be the head of the administrative system of the land. It is lawful for His Majesty to appoint one person to hold both these offices and normally they will be and are held by the same man. However, it is now possible in law for the Crown to appoint two separate dignitaries to perform the two different kinds of functions that are defined for them.

§8 INFLUENCE

That the cumulative influence of this lofty official upon **His influence** the administration of India is bound to be immense is obvious. His high social status and rank, his aristocratic connexions, occasionally his political influence as an active party leader are circumstances which give him prominence in comparison with his colleagues in the bureaucracy of India. His large powers, ordinary and extraordinary, as the head of the administration, his exalted social status as the direct representative of the Sovereign, and the large and lucrative patronage in his possession, are factors which give him supreme eminence in the state. A heavy responsibility devolves upon him in maintaining the safety of the British Raj.

The combination of all these circumstances raises the Governor-General of India head and shoulders above the other officials in the land. If he is endowed with a master mind and an assertive temperament, his views can colour every department of administration. If he happens to be a man of convictions and capacity, his personality is bound to permeate all important matters of policy and detail that come to be disposed of by any

one of his colleagues in the Executive Council individually or by all of them collectively.

The Prime Minister of England, presiding over the British Cabinet, appears to be only first among equals, with the Prime Minister a leader of his peers. The difference between him and his colleagues is created and tolerated only for the exigencies of smooth constitutional working. The Viceroy of India has the appearance more of a superior than of an equal. Constitutionally, the distance between him and his colleagues is far greater and much more fundamental than that between the Prime Minister and his colleagues in the Cabinet.

XIII. THE CENTRAL EXECUTIVE : THE EXECUTIVE COUNCIL

§1 GROWTH TILL THE ACT OF 1935

BEFORE the unification of the three Presidencies of Bengal, Madras and Bombay under one central authority, **The Regulating Act** affairs in each of them were managed by a Governor or President with the assistance of a Council of the senior merchants of the Company. Endeavours at administrative centralization began with the passing of the Regulating Act. This measure vested the control of the Company's affairs in India in the hands of the Governor-General and a Council of four persons. The first Governor-General was nominated in the Act itself. The origin of the Governor-General's Executive Council thus goes back to the year 1774. The number of Councillors was to be four. Their term of office was fixed at five years. The whole civil and military government of the Presidency of Bengal, including Bihar and Orissa, was vested in the Governor-General-in-Council, who was bound by the votes of the majority of those present at the meeting, the Governor-General having a casting vote in case of an equal division of opinion.

The unfortunate conflicts between Warren Hastings and **Pitt's India Act** his antagonistic colleagues in the Council were accentuated by the inherent imperfection of the Council's constitution. Therefore it had to be modified in the light of the experience of the first Governor-General. A clause was inserted in Pitt's India Act to the effect that as soon as the office of any one of the Councillors was, for any reason, rendered vacant, the vacancy should not be filled and the number of the Governor-General's Council should be reduced from four to three, an odd number being preferred to an even number for the more convenient use of the casting vote.

In 1786, on a demand being made to that effect by Lord Cornwallis before he accepted office, the Governor-General was given power to override even the majority of his Council on extraordinary occasions when he felt the use of this power justified in the interests of peace, tranquillity and good government in India.

The charter of 1793 once more affirmed that the whole civil and military government of the Presidency of Bengal and 'the ordering, management and government of all territorial acquisitions and revenues of the Company' were vested in the Governor-General and three Councillors. If the Commander-in-Chief was distinct from the person of the Governor-General, he might be specially authorized by the Court of Directors to be a member of the Council.

Further changes and detailed regulations were introduced by the Charter Act of 1833. The number of ordinary members was increased to four. Three of these were to be appointed by the Directors from among the servants of the Company who had at least ten years of service to their credit. If a man in the military service was chosen, he was not to hold any command during the continuance of his office as Councillor. The fourth ordinary member was to be appointed by the Directors, with the approval of the President of the Board, from amongst persons who were not servants of the Company. This member was not entitled to sit or vote in the Council except when the Council was considering the making of laws and regulations. The Commander-in-Chief, whenever the Governor-General himself was not holding the office, could also be appointed by the Directors as an extraordinary member of the Council, having rank and precedence after the Governor-General.

By the Charter Act of 1853 was repealed the provision of the Act of 1833, that the fourth member (that is the Law Member) was entitled to attend and vote only in meetings in which laws and regulations were discussed. The Law Member became a full member attending all meetings and voting on all questions considered in any meeting.

The Indian Councils Act of 1861 increased the number of ordinary members from four to five. Three of them were to be appointed by the Secretary of State-in-Council, and must have served at least for ten years in India under the Crown or the Company. The remaining two, one of whom was required to be a Barrister of England or Ireland or an Advocate of Scotland of not less than five years' standing, were to be appointed by Her Majesty under the Royal Sign Manual. It was lawful for the Secretary of State to nominate the Commander-in-Chief as an extraordinary member.

Further modifications were introduced in 1874. Power was given to Her Majesty to increase the number of ordinary members from five to six by appointing a sixth member under her Royal Sign Manual. The newly appointed member was to have charge of the Public Works Department. The clause which specifically mentioned the department that was given to him was repealed in 1904.

The Morley-Minto Reforms of 1909 introduced an innovation. There was nothing in the law to prohibit the appointment of qualified Indians to the Councils, and Lord Morley, in consonance with the new spirit in which he had enlarged the legislative councils and tried to associate Indians in the administration, caused executive action to be taken to include one Indian in the Executive Council. Since 1909, therefore, the Governor-General's Executive Council has invariably con-

tained at least one Indian. The first to be so appointed was Lord Sinha.

The composition of the Council as provided by the Government of India Consolidating Act of 1915 stood as follows. The Council consisted of ordinary and extraordinary members if any. The number of ordinary members was five or, if His Majesty so desired, six. Three at least of the ordinary members must, at the time of their appointment, have served the Crown in India for a period of not less than ten years and one must be a barrister of England or Ireland or an Advocate of Scotland of not less than ten years' standing. If any officer in military service was chosen to fill the post of Councillor, he was not to hold any command during such service. All the ordinary members were appointed by His Majesty under the Royal Sign Manual. The Secretary of State could nominate the Commander-in-Chief to be an extraordinary member. If the Council assembled in any province the Governor of the province could be an extraordinary member.

Finally, the Act of 1919 introduced a few changes. The limit on the number of members of the Executive Council was removed. Indian High Court pleaders of ten years' standing were qualified to be admitted. Governors of provinces ceased to be allowed to sit as extraordinary members when meetings of the Council were held in their territory. All members, in any number that His Majesty might think proper, were to be appointed by His Majesty by warrant. Three of them must have served in India for at least ten years. One must be a barrister of England or Ireland or an Advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. As for the qualifications for the remaining members, rules might be made under the Act to determine and define them.

Provision was also made to enable the Viceroy to appoint Council Secretaries from among the non-official members of the Legislative Assembly or the Council of State to assist the Executive Councillors in their work. The object was to give opportunities to non-official members to be trained in official business and to realize the practical difficulties of the administration. The salaries of the Secretaries were to be determined by the legislature and they were to hold office during the Viceroy's pleasure. However, this recommendatory clause has not been acted upon and no Council Secretary has ever been appointed.

Steps were taken to introduce a larger Indian element in the Executive Council. A practice was introduced in 1921 to increase the number of Indian members from one to three and it has since continued. In strict legal theory, there is no objection to all the members of the Council being Indians, provided they

are possessed of the requisite qualifications. But in practice no Indian was appointed till 1909

It may be noted that the Executive Council as such will **After the Act of 1935** vanish from the Indian constitutional picture if and when the Federation of India as outlined in the Act of 1935 is inaugurated. Its place will then be taken by a body of Counsellors and the Federal Ministry. Till that time, of course, the Council will continue to exist and function. Its present constitution, which is practically the same as that provided by the Act of 1919, is prescribed by the Transitional Provisions and the Ninth Schedule of the Act of 1935. Till its expansion which was effected in October 1941, the Council consisted of eight members, the portfolios being distributed among them as follows: (i) Viceroy and Crown's Representative—Foreign and Political Departments and Indian States, (ii) Commander-in-Chief—Army and Defence, (iii) Home Member—General supervision over matters affecting the I C S, Internal Politics, Police, Jails and Law and Justice, (iv) Finance Member—Finance and Budget, (v) Communications Member—Railways, Roads, Inland Navigation, Posts and Telegraphs, Broadcasting, Civil Aviation, Ports, (vi) Law Member—Legislative Department, (vii) Member for Education, Health and Lands, (viii) Member for Commerce and Labour including Industries, Insurance, Public Works and Irrigation, Mines and Minerals, etc. The qualifications of members were the same as those defined in the Act of 1919.

§2 EXPANSION OF THE COUNCIL IN 1941

An important development in regard to the Governor-General's Executive Council took place at the end of October 1941. The federal part of the Act of 1935 had not been made operative simultaneously with the inauguration of provincial autonomy in April 1937. After the outbreak of the present world war, its introduction was suspended indefinitely, and it was even announced that the whole question of the future constitution of India would be re-examined and reconsidered after the conclusion of the war. The proposed federal executive did not therefore come into existence. It was to have been composed of Councillors who were to be responsible only to the Governor-General, and Ministers who were to be answerable to and removable by the legislature. In spite of its unsatisfactory character, such a measure, if it had materialized, would have been some advance over a wholly irresponsible and irremovable Executive Council. But it was not to be.

There was keen disappointment in India at this turn of events. It had been hoped that a national government controlled by the legislature could and would be set up at the

centre, particularly in view of the grave emergency that had been threatening the country. The proposal was, however, ruled out. Parliament was not prepared to discuss any controversial issue or to initiate any major change in the constitutional structure of India while England was engaged in a life and death struggle. His Majesty's Government were, however, prepared, as an earnest of their desire to see the Government of India increasingly entrusted to Indian hands, and to sanction whatever reform was possible as an interim measure within the framework of the existing constitution.

The Act of 1919 and subsequently the Transitional Provisions of the Act of 1935 had removed the restriction on the number of members of the Executive Council. No definite figure was fixed by Parliament, and the actual strength of the Council was left to be determined from time to time by His Majesty in his pleasure. The number therefore could be increased or decreased without reference to Parliament. Nor had any Act laid it down that the Executive Council must necessarily contain a certain percentage of Europeans. The qualifications prescribed for its membership had reference to a minimum period of service under the Crown or a minimum standing as a lawyer. Even before the Morley-Minto reforms of 1909, it was theoretically and legally possible for the Council to be composed entirely of Indians, though ironically enough not a single Indian had actually a place in it. After the Montagu-Chelmsford reforms the number of Indian members rose to three, as against five Europeans including the Viceroy.

It was felt that even if no radical change could be introduced in the constitutional status of the Council, its substantial expansion and Indianization could go a long way towards transference of authority into the hands of Indians, particularly if the Indian members were placed in a clear majority. Accordingly it was decided to take that important step, and the decision was announced by the Government of India in a communiqué issued in July 1941. The Executive Council was to be enlarged by the addition of five new seats, and the appointment of five Indians to hold them was also mentioned in the communiqué. This meant an increase in the total number of the members of the Council, excluding the Viceroy, to twelve, of whom eight were to be Indians—that is they were to be in a majority of almost two to one. The Council thus expanded and constituted began to function from October 1941.

The reason given in the Government of India's communiqué for the expansion of the Executive Council was quite modest—merely increased pressure of work in connexion with the war and the need for the creation of

some new portfolios The Secretary of State, however, in a speech made in the House of Commons gave a further clarification of the issue It was, he said, the wish of His Majesty's Government 'to associate Indian leaders more intimately and responsibly with the government of their country during the war We wished to do so in order to emphasize the undoubted unity of purpose between Indians and ourselves in this struggle'

We also cherished the hope that in the process of working together in the common cause, Indian statesmen would find new bonds of union and understanding among themselves It would afford a wider range of administrative responsibility and experience to Indian public men'¹ This of course is not the democratic and responsible government demanded by Indians But it is claimed that the new development marks a change if not in the form of the constitution at least in its spirit For the first time in the history of British India, the work of government is entrusted to a body which contains a majority of Indians, though they cannot be described as the elected representatives of the Indian people

The existing distribution of portfolios among members of **Present** the expanded Executive Council is as follows —
portfolios (i) Viceroy and Crown's Representative, (ii) Commander-in-Chief, (iii) Member for Home Affairs, (iv) Member for Finance, (v) Member for Communications, (vi) Member for Supply, (vii) Member for Civil Defence, (viii) Member for Information, (ix) Member for Labour, (x) Member for Commerce, (xi) Member for Law, (xii) Member for Education, Health and Lands, and (xiii) Member for Indians Overseas Of these the first five portfolios are held by Europeans and the remaining eight by Indians The former group contains the most important departments of State and the fact that none of them was assigned to Indian members has been widely criticized.

§3 POWERS, FUNCTIONS AND TENURE

The superintendence, direction and control of the civil and **Before the** military government of India were vested in the
Act of 1935 Governor-General-in-Council till the Act of 1935 Every local government had to obey that authority and to keep members of the Council constantly and diligently informed of all matters of importance in its administration Subject to restrictions imposed by the Secretary of State-in-Council, the Governor-General-in-Council was empowered to 'purchase and sell and mortgage property, to borrow money, and to execute assurances for that purpose' The same authority could, with the previous sanction of His Majesty, constitute a new province under a Governor or Deputy Governor or Lieutenant Governor, could declare any tract to be 'backward' and make

¹ *Times of India*, 4 August 1941

special arrangements for its administration; could create Executive Councils for Governors' provinces and determine the number and qualifications of their members; could, by notification, take any part of British India under the immediate authority and management of the Governor-General-in-Council and could alter the boundaries of provinces. It could also constitute local legislatures for Governors' or Commissioners' provinces. It could alter the local limits of the jurisdiction of Indian High Courts, could appoint additional judges to the High Court for a period not exceeding two years and appoint a judge to act as Chief Justice when a vacancy occurred and till the vacancy was permanently filled.

After the introduction of provincial autonomy as envisaged by the Act of 1935, the powers of the Governor-General-in-Council have been necessarily reduced so as to make them consistent with the autonomous status of the provinces. The general power of superintendence, direction and control over the civil and military government in India has been abolished. The executive authority of the Governor-General-in-Council now extends to matters with respect to which the central legislature has power to make laws, that is, to subjects mentioned in the Central or Federal Legislative list. It does not extend, save as expressly provided for in the Act, in any province in matters with respect to which the provincial legislature has been given power to make laws, that is, to subjects mentioned in the provincial list. There is therefore a substantial reduction in the powers of the Central Government. The formation of new provinces is also no longer within their competence. In the sphere in which political control has been transferred to the people of the province the authority of the Governor-General-in-Council has been considerably withdrawn.

The Governor-General-in-Council cannot declare war or commence hostilities or enter into a treaty without the express order of the Secretary of State. In any emergencies when hostilities have been already commenced or preparations for them have been already actually made against the British Government in India, the Governor-General-in-Council can declare war and immediately send intimation to the Secretary of State. The Governor-General-in-Council has, by delegation, powers to make treaties and arrangements with Asiatic States, to exercise jurisdiction and other powers in foreign territory, and to acquire and cede property. He also enjoys such powers, prerogatives, privileges, and immunities appertaining to the Crown as are 'appropriate to the case and consistent with the system of law in force in India.'

The tenure of office of a member of the Executive Council has been fixed by a well-established custom at five years. The Leave of Absence Act of 1924 has now been repealed, but

according to the Ninth Schedule of the Act of 1935, the **Tenure and leave** Governor-General-in-Council may grant to any member leave of absence for urgent reasons of health or private affairs. Such leave cannot exceed four months and cannot be granted more than once during his tenure of office. Suitable leave allowances have been provided for under rules made by the Secretary of State-in-Council.

§4 METHOD OF WORKING

Originally the Executive Council of the Governor-General **Before 1861** 'worked together as a board and decided all questions by a majority of votes'. There was no systematic distribution of work among its members. Every question that came up for the disposal of the Governor-General-in-Council was disposed of by the Council as a whole, sitting collectively. There was no division of labour, no allocation of departments to individual members. This sort of working in a mass entailed enormous delay and began to prove increasingly difficult as the nature of the Government functions became more complex and their scope widened. The appointment of special members for Law and Finance in 1833 and 1861 respectively was an acknowledgement of the unworkable nature of collective council work. Lord Canning abandoned the system altogether and carried to a logical conclusion the principle that was initiated in 1833.

He distributed the ordinary work of the departments among **Portfolios** the members and laid down that only the more important cases were to be referred to the Governor-General or dealt with collectively. This is what is known as the portfolio system which continues to exist to the present day. Under the working of this system, each member, in regard to his own department or departments, has the final voice in ordinary departmental matters. He is councillor and administrator together. Any subject of special importance or one in which it is proposed to overrule the views of a Provincial Government must be referred to the Viceroy, and so must matters which originate in one department but also affect other departments. The members generally meet in council once a week and discuss questions which the Viceroy desires to put before them or which an overruled member might desire to have discussed by the Council. In any difference of opinion, the decision of the majority ordinarily prevails, the Viceroy having an overriding veto in exceptional circumstances.

In the nature of things, the Viceroy's Executive Council **No collective responsibility** cannot be described as a cabinet in the British sense. For a long number of years its composition was entirely bureaucratic, and even the inclusion of a few non-official Indians did not make any difference in that status. It could not have worked on the principle of collective res-

ponsibility, members coming into and going out of office together under the leadership of a common leader, and pursuing a common political programme to which they had pledged themselves at the time of election. With the inclusion of eight non-official Indians in the Council, it has been suggested that the cabinet system of working may, by convention, be introduced. Referring to this matter, the Secretary of State said in the House of Commons¹ that the new members would share full statutory collective responsibility of the whole Council as well as being responsible for the administration of important departments. The language of this statement is vague, it is not clear that collective responsibility as it operates in the British cabinet is intended to be introduced. Nor does it seem to be possible as long as officials are selected to be members of the Council, even granting that all non-official members, selected individually and without the unifying influence of party affinity, agree to abide by the principle.

Immediately subordinate to the member in charge is the **The** officer known as the Secretary. He is in charge of **Secretaries** the departmental office. His position corresponds as the Decentralization Commission has pointed out, to that of a permanent Under-Secretary of State in the United Kingdom. There is however this difference. In India, the Secretary is allowed to be present at the meetings of the Executive Council to furnish any detailed information that might be required regarding his own department. Besides, he is required to attend on the Viceroy usually once a week and to discuss with him all matters of importance arising in his department. He has the right of bringing to the Viceroy's special notice any case in which he considers the concurrence of the Viceroy with the member's action or proposal to be necessary. His tenure of office is usually three years.

Thus the constitutional position which he enjoys is unique. He is a subordinate, having the special privilege of direct access to the superior of his immediate superior. He can influence the mind of the Viceroy about any matter in his department without the knowledge of the member in charge. The system is a remnant of the old days when it was considered desirable to keep a check over the actions and the departmental independence of the Executive Councillors. The Governor-General as the head of the administration was therefore empowered to keep in direct touch with departmental working through the Secretaries. Indian public opinion is inclined to condemn this sort of constitutional anomaly as likely to encourage mistrust and misunderstanding, particularly after the admission of Indians to the Executive Council.

¹ *Times of India*, 24 August 1941

§4 COMPARISON WITH BRITISH MINISTERS

The student of constitutions will perceive that till very recently an English Minister differed essentially from a Member of the Indian Executive Council. The former is a politician first and an administrative officer afterwards. Indeed he comes to be the latter because he has been the former. English Ministers are not lifelong bureaucratic servants, persons in Government service are precluded from taking seats in Parliament and therefore in the Cabinet. Things were different in India till the expansion of the Council in October 1941. A few Indian public men could find a place in the Council, if chosen to fill the appointments by the Viceroy. But others were selected from the most successful servants in the administration. Elevation to the Executive Council and enjoyment of the prospects that it offered were among the principal attractions of the Indian Civil Service.

The initiative and independence characteristic of a body like the British Cabinet, which excludes bureaucratic officials from membership, were naturally absent from the Executive Council as a whole in India. Nor did its members possess that sense of equality which permeates the relations of the English Ministers with their chief, the Prime Minister. The important patronage in the hands of the Governor-General was not a negligible factor in this connexion. There were still higher rungs in the official ladder than an Executive Councillorship, which might indeed lead to them.

Much of course depended upon the head. He was a stranger to the land which he was sent out to rule. He set out to work with a bureaucracy which had crystallized traditions. It supplied the expert knowledge about men and things in India, obtained after prolonged years of service on the spot. The claims of such a body to be recognized as an authoritative and correct guide could not be lightly disregarded, and sometimes it was not the Viceroy but the Council which really ruled. However, to a Viceroy endowed with a distinct individuality and vigour of will, the constitutional atmosphere of the Council was congenial to the development of his personal influence and the acceptance of his lead in all matters of policy and detail. However, the assistance of the Executive Council was indispensable to the Viceroy in all circumstances. It maintained the continuity of administration. And except under abnormal circumstances no Viceroy would think of exercising his extraordinary prerogatives in order to override the declared opinion of the Executive Council. As J. S. Mill said, the advisers attached to a powerful and self-willed man ought not to be put under conditions which would reduce them to a cypher.

The recent enlargement of the Executive Council and its **After** substantial Indianization and non-officialization **expansion** have naturally changed its complexion. It has ceased to be a predominantly bureaucratic body, though a certain official element still persists in its composition. It is also true that the non-official councillors are not necessarily required to be elected members of the central legislature. Nor does the principle of political responsibility of the parliamentary type govern its working. However it is hoped that conventions and traditions that are set up in the performance of its duties will approximate to the parliamentary atmosphere in all essentials.

XIV. SOME GENERAL INFORMATION CONCERNING LEGISLATURES

THE legislature is one of the most vital parts of a country's constitutional system in modern times. The significant position that it holds in national life must be clearly appreciated. Certain principles have now come to be specially associated with the formation of legislative chambers and with the definition of their powers. The routine of their working has also crystallized along certain broad lines. The law-making bodies of any particular country have to be judged in the light of these general standards.

There are two types of legislatures in Indian polity. One functions for the Central Government and the other for the provinces. A detailed study of their structure, powers, and operation may, with benefit, be preceded by a very brief description of a few main features of legislative institutions, which will supply a proper perspective for an understanding of their progressive growth in India and their present value.

§1 IMPORTANCE OF THE LEGISLATURE

In all important western countries the legislature has now acquired a peculiar importance. Originally, it was predominantly, if not purely, a law-making body. Its function was to pass measures which required the force of legality. The business that it transacted pertained primarily to Bills and Acts. From this position of comparative simplicity the legislature has now evolved into a body which exercises general control over the administration.

The principle and practice of political responsibility move round the pivot of the legislature's supremacy over the executive. The powers and functions of the legislature are the touchstone which assesses the degree of popular control that obtains in a constitution. Modern legislatures are not only law-making bodies: they make laws, they vote grants of the necessary money, they practically appoint the Ministers, direct, control and modify their policy, and in case of a disagreement, even dismiss them. The daily routine of departmental management is not, indeed, looked after by them, but the general line of administrative action and the general principles governing the policy of the state are all inspired and dictated by their opinions and views. In other words, an all-sided control of the state vests in the legislature in a form of government which is described by constitutional writers as responsible. The English Cabinet, for instance, is the product of Parliament and completely amenable to it.

This unique importance that has progressively come to be attached to the legislature in modern days is the natural consequence of the changed character of the structure of legislative chambers. They are now elected bodies largely reflecting popular opinion and therefore carrying with them the prestige of being the accredited mouthpieces of the whole nation. To find the extent and the reality of the legislature's predominance over the executive is to measure the progress in democratization and responsibility of that form of polity. The more complete the subordination of the executive, the greater is the advance in the direction of responsibility. The legislatures in India, therefore, whether in the Central Government or in the provinces, have to be judged by this criterion.

§2 THE FUNCTIONS OF A LEGISLATURE

A legislature's functions and powers can be divided into different parts. For instance, they can be described separately as referring to legislation, or to administration, or to finance. The meaning of the first division is clear. No measure can obtain the force of legality unless it is passed by the legislature. Everything that is incorporated into the law of the land, and obedience to which is required of the citizens, has to receive the legislature's sanction before it can be so incorporated and enforced. Unless otherwise provided, no Bill which is not voted by the legislature can have application in a court of law.

The control over administration is exercised in various ways.

i. Administrative (i) by moving resolutions, (ii) by moving votes of no confidence or censure, (iii) by moving adjournments and (iv) by asking questions and supplementary questions to elicit information about departmental details.

(i) On any matter of public importance the legislature might express a clear opinion after having discussed the issues thoroughly. This expression of opinion is in the form of a recommendation to the Government. It has no binding legal force. It is not a law and has not to pass through the elaborate procedure to which every Bill is subjected before its final consummation into an Act. Yet the expression of opinion has a value of its own. It makes plain the views of the elected representatives of the people, and therefore serves as an indicator which records the strength and the direction of popular opinion. A clear indication of the popular will cannot be ignored by any executive Government having a sense of responsibility. It serves to guide correctly, if not to control rigidly, any steps that may be contemplated by the executive authority.

(ii) A vote of no confidence or censure is the most direct

way of expressing disapproval and of indicating the agency which it is desired to condemn. In a responsible administration, occasions for votes of censure are rare, for, before matters come to that pass, numerous indications are given of the existing displeasure and they are immediately understood. This right is of particular use in those forms of government where the executive cannot be removed from office by the legislature. A direct and emphatic condemnation of the actions of irresponsible officials is likely to serve as a moral restraint upon them.

(iii) Adjournment motions are intended to direct the attention of the house and the Government to any extraordinary happening involving public weal or interest that might take place during the actual session of the council or that may have taken place only a short time prior to the meeting of the session. Any member may beg leave to move that the regular business on the agenda be temporarily suspended and that the house do discuss the extraordinary occurrence, provided the president allows the motion. The president need not do so if he feels that the matter, for the discussion of which a temporary suspension of the regular agenda is requisitioned, is not of sufficient importance to justify the suspension. Motions for adjournment save the discussions of the chamber on prominent and burning topics of the day from being stale.

(iv) The power of asking questions and supplementary questions is extremely valuable. It serves to throw important sidelights on the administration by enabling members to elicit information regarding routine departmental management. It is useful in exposing any unjust or tyrannical abuse of the freedom of judgement and discretion that has necessarily to be allowed to the executive. Any member of the legislature can put a question on a matter of public interest, subject to its disallowance by the president, and if the answer given proves unsatisfactory, either the member who puts the question originally, or any other curious or dissatisfied member may put further supplementary questions. This at times approximates to a regular cross-examination. Details which are too trivial to be discussed in the form of resolutions and which are too important to be completely ignored can be brought up for public criticism through the exercise of the power of interpellation.

Publicity is the greatest check and the greatest corrective to the waywardness of all normal governments. Publicity is of still greater value when the form of government is an irresponsible bureaucracy. Resolutions, adjournments, votes of censure, questions and supplementary questions are instruments of publicity, and so long as the working of the Government has not become mechanical and unhuman, the fear of public

criticism and public exposure proves a salutary restraint upon the actions of Government officials

The last and most important power that a legislature can **enjoy** is control over the purse. The great constitutional struggle in England throughout the Stuart period, and even earlier, centred round the disputed question whether the King could levy taxes without the consent of the people and spend them as he liked, irrespective of the wishes of Parliament. The most glorious achievement of the popular party in the struggle was the establishment of the principle that the money which the king's authority wanted to collect from the people by way of taxation must be voted by the representatives of the people assembled in Parliament. Parliament also decided the manner of its collection and the direction of its expenditure. The essence of democracy lies, among other things, in this undisputed control over the purse that is exercised by the people through their chosen representatives. The real power of any legislature is to be measured by the degree of the monetary powers it enjoys. The English Parliament—or more correctly the House of Commons—is the sole authority for and the sole custodian of the finances of the Government of England. The executive can get only as much money as is voted by Parliament, and has to spend it on those purposes only for which it has been specifically voted. Finances are to the State what breath is to the body, and in responsible forms of government entire control over them is vested in the legislature.

§3 FRANCHISE AND ELECTORATES

Democracies in modern days are representative. A direct democracy is a physical impossibility, apart from **Modern democracies are representative** considerations of its advantages or disadvantages. In a representative government, the affairs of the State are entrusted to a few people chosen by the citizens. In an ideal state of things, every citizen, unless positively disqualified, has the right of voting in the election of such persons. The smaller the number of disqualifications and the larger the number of persons who are authorized to give their vote, the more representative becomes the character of the Government.

The right of giving a vote is described, in political science, as the franchise. Persons to whom the right of franchise is given are described as the electorate or the constituency. The electorate is not identical with the total body of the citizens. It contains only those persons who are allowed to take part, indirectly, in the administration of the land.

What sort of persons should be excluded from the enjoyment of this political privilege? On the answer to this crucial question depends the degree of the democratic character of a

democracy. Certain disqualifications are obvious. **Disqualifications** Children and young boys are not, for instance, intellectually able to understand the problems of government and to exercise the franchise. Lunatics and madmen come in the same category. Criminal offenders who have been convicted by a court of law for crimes against society evidently cannot be permitted to have any share in the formation of the Government. The same viewpoint holds good in the case of bankrupts. Even in countries where there is universal franchise, these disqualifications are accepted as necessary and desirable.

Most of the representative Governments in the past had **Adult** more restrictions than these on the exercise of the **suffrage** franchise. Women, for example, were disqualified on account of their sex even if they possessed the other necessary qualifications. Poor persons, labourers, and wage-earners were also regarded as unfit to possess the right of giving a vote. Ownership of a certain minimum amount of property or income has been an almost invariable qualification to entitle persons to have the vote. The trend of modern times is to reduce the amount to as low a figure as possible so as to include in the electorate the largest number of citizens.

Some western countries have abolished property qualification altogether. They have conferred the right of vote on all citizens, men and women, who have reached a certain age, and who are not debarred otherwise, as for instance on grounds of lunacy, treason, or bankruptcy. Conditions in India may be different, but the Indian electorate is to be judged from the same point of view. The Nehru Report advocated the introduction of adult suffrage.

§4 ELECTORATES IN INDIA

It will be pertinent to describe here the different kinds of electorates that exist in India at the present day. They are mainly based on qualifications either of property or community or special interests. Residence is also an important factor.

A general electorate is one in which no account is taken of the race or community of the voter. The electoral law prescribes certain property and other qualifications, and all citizens who **General** possess them are entitled to vote, irrespective of **electorates** caste, creed and religion. Residence in a definite territorial area, which defines the geographical limits of the electorate, is of course essential.

In India, the nearest approach to a general electorate is found in the non-Muslim constituency. It consists of all enfranchised persons, other than Muslims, in any electoral area. It may thus be composed of **Non-Muslim** **constituency** Hindus, Parsees, Jews, Christians and others, all placed

together in one group, provided they satisfy the conditions about the franchise.

The concept of a communal electorate is different. Here **Communal electorates** the very first condition which is essential to entitle a person to a vote is that he must belong to a particular community. Being a member of that community, he must further satisfy the conditions of the franchise as they may have been fixed by the electoral law. Persons not belonging to that community are entirely excluded from the electorate.

In India, communal electorates have been conceded to Muslims throughout the land, to the Sikhs in the Punjab and to the Europeans in important cities and plantations. The voters who vote in these constituencies and the candidates who contest these seats must belong to the Muslim, Sikh and European communities respectively. Others can neither vote nor stand for election in these electorates.

It is possible to devise an electorate which is a compromise between the general and communal principles and **Mixed electorates with reserved seats** combines both of them. That is known as the system of mixed electorates with reservation of seats for particular communities. In such a system it is not necessary that the voters or electors should belong to a particular religion or race. The electorate contains the names of all those who possess the requisite franchise, though they belong to different creeds and communities. But it is also laid down that out of the total number of seats which have to be filled by election a certain number must be held by members of a particular race.

An illustration will make the point clear. Suppose a territorial constituency has been assigned three seats in the legislature. It may be prescribed that at least one of these three seats must be held by a Muslim though the electors are composed of both Muslim and non-Muslims.

It may happen that in the election the three candidates who poll the largest number of votes, in consecutive order, are all non-Muslims. In that case the third candidate is not declared to be elected, but the Muslim candidate who has obtained the largest number of votes, though he may stand much lower in rank in the numerical order, is declared successful.

On the other hand, it may also happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all Muslims. The election of every one of them is, in that case, considered to be perfectly valid. In addition to the one seat reserved for them, they are thus enabled to capture the remaining ones.

In a communal electorate the candidate has to win the confidence of the members of his own community only. In a mixed electorate with reservation of seats, he has to look for

votes even outside his community and endeavour to be popular with all

In India, the concession of the privilege of reservation of seats for their own community was granted to the Maratha caste in the Bombay Deccan in elections to the Bombay Legislative Council by the Act of 1919. The Nehru Report advocated the extension of the same system throughout the whole country in place of the present communal electorates. A considerable body of enlightened public opinion also supports the same view in the interests of a consolidated Indian nationalism.

Besides these types there is another type known as 'special constituencies'. These are intended to represent certain special interests in the country in their own right and independently. The landed aristocracy of the country, the trade and commerce of the country, educational institutions like universities, are all special interests which have to be properly safeguarded and which are given special recognition as entities useful and beneficial to the State. They are therefore very often formed into constituencies by themselves. Such a constituency consists of all persons who are united by the tie of common interest, irrespective of community or race. They are thus different from communal constituencies.

In India several universities have been given the right of sending their own representatives to the legislature. Similarly, European Chambers of Commerce, Indian Merchants' Chambers and Bureaus, Mill-owners' Associations, Sardars and Inamdars have been created into constituencies by themselves. Every person who is a recognized constituent of these bodies can vote in elections which are held for the return of their representatives.

Communal electorates were first introduced in India in 1909 as the most effective, convenient and satisfactory means of protecting the interests of minorities. One of the greatest imperfections and dangers of democracy is the possibility of its degenerating a tyrannical rule of the majority over the minority and the suppression of the latter. This danger is considered to be more probable and more acute in a country like India where the minority is demarcated and distinguished from the majority not only on social or political questions but on grounds of difference in religion and historical antipathy. These considerations, it is said, make it necessary to provide some safeguard against the possible danger, and the safeguard which appeared to be the most satisfactory and convenient to the British authorities in 1909 was the splitting up of the general Indian electorate into two or more parts on the principle of religion and race. To such exclusively racial electorates was given the right of sending representatives from amongst themselves. The

electorates were generally formed according to the numerical proportion of the race to the total population in a specified area.

Communal electorates have a tendency to emphasize the existing racial and religious differences and to perpetuate the cleavage in national life which is created by those differences. **Their dangerous effects** They destroy the sense of comprehensive nationality based on the community of social and political interest. By putting a premium upon communalism they positively discourage any tendency to fusion of the fissile elements of the different communities, and engender a narrower and more selfish angle of vision. The communal and religious antagonism in India is attributed by many eminent Indians to the existence of communal electorates. However, they are an accomplished fact in Indian polity and it is extremely difficult to undo what has been done. They have acquired the strength of a vested interest. The minority is reluctant to part with a privilege which has been in its possession. It will be a long time before the minority can be persuaded to accept other more scientific and less objectionable devices to protect its interests.

All persons born in the state are not automatically given the right of voting even under the system of adult franchise. **The electoral roll** And when the latter is not in operation, certain property and other qualifications are prescribed by law to determine the right of voting. A list is made, for a specific territorial area, of all persons who possess those qualifications and are therefore entitled to exercise their vote. This list is called the electoral roll.

A preliminary and tentative edition of the electoral roll is published by the Government and kept open for public inspection for a stated period of time. It may happen that names of persons who, by their possession of the requisite qualifications are entitled to get a vote, have not been included in the electoral roll through oversight or mistake. Such omissions can be brought to the notice of the Collector or other authorized official and rectified by him. A revised and final edition of the electoral roll is then published and only the persons whose names are included therein are allowed to vote at the time of election.

§5 THE BICAMERAL SYSTEM

In the bicameral system, the legislature is composed of two separate chambers. One of them is known as the **The Upper House and the Lower House** Upper House or the Second Chamber, and the other is known as the Lower House or Chamber. The electorates of the two Houses are not the same. Their powers, functions and political status are not identical. They are formed to fulfil different purposes and embody different ideals.

The Upper Chamber is intended mainly to represent the vested interests and the wealth of the land. It consists of the members of the historical aristocracy, big landowners, wealthy merchants and other propertied persons. A sprinkling of a few intellectuals and public workers is also usually added to it. On the other hand, the Lower Chamber is more democratic in character. It is expected to contain the poorer element in the community and therefore the franchise for its election is deliberately kept low.

Because the Lower Chamber is more representative and democratic in its structure it is usually invested with greater political power and control. It is considered only fair and natural that the body which reflects in a very great measure the nation's will should possess the dominant authority in the state. For this reason the English House of Commons is empowered to make and unmake the executive government in that country and to dictate to it.

The Upper Chamber represents only the privileged few who form the higher strata of society. Its members are not expected to be in the closest touch with the demos, or to give expression to its ambitions and sorrows. They are therefore precluded from exercising any effective control over money matters either on the income or on the expenditure side. Even in subjects other than finance the tendency of modern days is to look upon the second Chamber as a brake and as a restraint on the impulsiveness of democracy. It is entrusted with the duty of amendment and revision. It is empowered to compel reconsideration of a measure which may have been passed by the Lower Chamber without due consideration. However, it is not intended that a body which represents only the aristocracy and the oligarchy of the land should be permitted to be a permanent hindrance to national progress as visualized by the large majority of citizens who are electors.

Political thinkers are not agreed on the question as to whether two legislative chambers are necessary or desirable in a unitary state at all. There are not a few who hold the heterodox opinion that a second chamber is an unwanted superfluity and a nuisance. They feel that its existence involves an unnecessary reduplication of governmental work and consequently an enormous waste of time, energy and money. To such critics it appears that the alleged indispensability of the second chamber is not based on rational conviction but on prejudices engendered by the superstition of constitutional orthodoxy.

The framework of Indian polity has been unitary since the Regulating Act. Even the Montford Reforms did not make

it federal. However the Act of 1919 introduced the bicameral system in the central legislature of India by the **Its introduction in India** creation of the Legislative Assembly and the Council of State. It may be conceded for the sake of argument that the dangers of an upper chamber are not likely to become serious in a free nation. But its blind imitation in a subject country may prove perilous to national advance towards autonomy.

The Indian Government has not yet been made responsible to the Indian people. Conditions in this land are not therefore similar to those that obtain in a self-governing dominion or a sovereign state. In the psychological and material environment of a conquered race the existence of an oligarchical legislative house has a tendency to prove ruinous to political progress. It may detract from the growth of national solidarity.

XV. THE CENTRAL LEGISLATURE : GROWTH TILL 1919

§1. FROM 1600 TO THE REGULATING ACT

As the Montford Report has pointed out, the germ of the **The charter of Elizabeth** legislative powers of the Government of India hes embodied in Elizabeth's Charter which established the East India Company in the year 1600. By one of the clauses of this charter the Company were permitted to 'make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as shall seem necessary and convenient for the government of the same Company and for the better advancement of their trade'. They might also impose such pains, penalties, and punishments as might seem necessary or convenient for the observation of these laws and ordinances. The only precaution that was expected to be taken was that their laws must be reasonable.

Sir Courtenay Ilbert has pointed out that this power was similar to the power of making by-laws that is enjoyed by any ordinary municipal or commercial corporation. The 'laws' must have been, in the nature of things, only regulations for the guidance of the Company's servants and officers, factors and apprentices. No copy is known to exist of any 'laws' made under the first charter or the early subsequent charters. The East India Company was only a commercial corporation and only so much power must have been required and exercised by it as was necessary to keep the trading affairs of the Company going properly. No political significance attaches therefore to the regulations that might have been issued by them from time to time.

The power of making rules and regulations given in the **Subsequent charters** original charter was renewed and occasionally augmented in the later charters whenever circumstances demanded any addition to them. The Charter of 1726, granted by George I, invested in the Governors-in-Council in the Presidencies the 'power to make, constitute and ordain by-laws, rules and ordinances for the good government and regulation of the several corporations thereby created and of the inhabitants of the several towns, places and factories'.

After the grant of the Diwani in 1765, the Company obtained **After the grant of Diwani** legal recognition and status as the accredited political agents of the Emperors of Delhi. Consistently with this status they had to discharge certain functions avowedly political and administrative in character such as the management of revenue and judicial business. This was another source of legislative power now

available to the Company. They inherited all the power that had belonged to important Viceroys under Mogul rule. In the task of the disposal of administrative business that had now developed upon them, the Company's officers in Bengal—like Warren Hastings—had to make rules and set up courts of law and to see that proper order was evolved and governmental organization formed. The Diwani was not a charter granted by Parliament or by the King of England. Power obtained under it was obtained from the ghost of a great authority and a great name whose glory had now completely faded.

It was not till the middle of the eighteenth century, after the battles of Plassey, Wandiwash and Buxar, that any territorial responsibility was directly assumed by the Company. With the acquisition and gradual expansion of this responsibility, the need was increasingly felt that the Company should make proper arrangements for the regulated governance of the territories they had acquired. The gradual transition of the Company from a purely commercial to a politico-commercial body made it necessary that, for the proper discharge of their new duties, new and specifically recognized additional powers should be conferred upon them.

§2 FROM THE REGULATING ACT TO THE MORLEY-MINTO REFORMS

The Regulating Act of 1773 created a Governor-General to control the Company's dominions in India. To **The Regulating Act** this controlling authority, namely the Governor-General-of-Bengal-in-Council, was given 'power to make rules, regulations and ordinances for the good order and civil government of the Company's settlements in Bengal'. Curiously enough, these had to be registered in and approved of by the Supreme Court.

The Amending Act of 1781 tried to make the issues clear and to remove obstacles in the working of the Regulating Act. It also definitely empowered the Governor-General-of-Bengal-in-Council to frame regulations from time to time for provincial courts and councils. Copies of these had to be sent to and approved of by the Directors. It was no longer necessary to register the Governor-General-in-Council's rules and regulations in the Supreme Court and to get them approved of by that body. This is the beginning of those complex legislative powers which are today enjoyed by the central legislature.

The Act of 1797 expressly sanctioned the exercise of a local power of legislation in Bengal. It also directed that all regulations of the Governor-General-in-Council affecting the rights, *persons or property of the natives should be registered in the* judicial department, formed into a regular code, and printed and published in all the languages of the country. The Act of

1807 gave to the Governors-in-Council in Madras and Bombay the same power of making regulations as was enjoyed by the Governor-General-in-Council in Bengal. Between 1807 and 1833 all the three Councils continued to make regulations and issue ordinances and add to the volume and complexity of the legal system. Legislative power was thus vested in and exercisable by the executive Governments in the three Presidencies.

In 1833 an important innovation was introduced. **The Act of 1833** Governor-General's Executive Council was increased by the addition of a fourth ordinary member who was not to be one of the Company's servants and who was not entitled to act as a member except for legislative purposes. Further, the Governor-General-in-Council was exclusively vested with the legislative power, and the Provincial Governments were entirely deprived of it. They were only allowed to submit drafts of laws which they desired to get passed for their respective areas. The Governor-General-in-Council could make laws and regulations for repealing and altering any existing measure, for all persons, places and things, for servants of the Company and for native officers and soldiers in the employ of the Company. Laws made by the Governor-General were liable to be vetoed by the Court of Directors or the Board of Control. The supreme prerogative of the Crown was of course left unaffected. A comprehensive consolidation and codification of Indian laws was also contemplated. The Indian Law Commission were appointed and they issued the Indian Penal Code. The passing of legislation by councils specially formed for the purpose thus began from the year 1833. Henceforth 'Regulations' give place to 'Acts', a change in name which is significant of the change in the character of the source of the legislation.

The legislative member was made an ordinary member by **The Act of 1853** the Charter Act of 1853. The Executive Council was enlarged for legislative purposes by the addition of the Chief Justice of Bengal, a puisne judge and four servants of the Company of not less than twenty years standing, nominated by the Governments of each of the provinces of Bengal, Madras, Bombay and the North-West Provinces. In all, for legislative purposes, there were to be twelve members including the Governor-General, Commander-in-Chief and four ordinary members. The Legislative Council thus constituted was intended for purely legislative work. It must be noted that the Legislative Council as such had no separate existence. As Strachey points out, there was only one council known to the law. That was the Executive Council. Additional members were invited to join when it met for legislative purposes.

A new phase was opened in 1858. The Mutiny had come and gone. The East India Company was abolished and with

it the Double Government introduced by Pitt's India Act of 1784 The Crown and Parliament directly undertook the responsibility of the government of India

After the task of the conquest of India was completed the Company's administration settled down into a peaceful routine. It was no longer necessary to emphasize the military side of administration, and attention was naturally directed more towards the problems of peaceful government. On the abolition of the Company and the transference of government to the Crown, a new phase was opened. The ideal of British administration in India was proclaimed to be the development and cultural and material advance of the people of India. The conquering power declared that it looked upon its conquest as a sacred trust, involving the responsibility of educating and generally uplifting the huge masses of population that by coincidence of circumstances had come under its rule. The declared intention was to set up a peaceful progressive, liberal administration which would more closely associate the conquered classes with the conquerors and impart to them administrative and political training. The history and progress of the Indian legislatures synchronizes with the history of the progressive stabilization of the British power in India.

By the Act of 1861, for purposes of legislation the Governor-General The Act of 1861 General nominated not less than six and not more than twelve additional members who took office for two years. Of these additional members not less than half were to be non-officials. The legislature established by the Act of 1853 'had modelled its procedure on that of Parliament and had shown an inconvenient degree of inquisitiveness and independence'. The Act of 1861 expressly limited the function of the Council to legislation only. It could not entertain any other interrogative or deliberative motion. Measures relating to the public revenues of India or public debt, religion, military and naval matters, foreign relations, were not to be introduced without the Governor-General's previous sanction. To every Act passed by the Council the Governor-General's consent was necessary. The legislative powers of the Governor-General-in-Council were declared to extend to 'making laws and regulations for repealing, amending or altering any laws or regulations' already existing, and to 'making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things within the Indian territory, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty'.

The powers of legislation taken away from the Provincial Governments by the Act of 1833 were restored to them. No

line of demarcation was specially drawn between the central and provincial subjects. The previous sanction of the Governor-General was made necessary for certain legislation by the local legislatures and all Acts passed by them required the subsequent assent of the Governor-General and the Secretary of State.

The Act also empowered the Governor-General to establish, by proclamation, Legislative Councils for Bengal, the North-West Provinces and the Punjab. They were established respectively in 1862, 1886 and 1898.

The Act of 1870 enabled the Governor-General to legislate in a summary manner for the less advanced parts of India by proclaiming certain areas as coming under this Act and then making the necessary regulations for their government through the Governor or other administrative officer who might be in charge.

The Indian Councils Act of 1892 increased the number of members of the Legislative Councils, introduced changes in the system of nomination and granted some relaxation in the rigidity of their procedure. The Governor-General's Legislative Council was now to consist of not less than ten and not more than sixteen additional nominated members. The minimum number of non-official members was increased to ten instead of the old proportion of one half of those nominated. Of these ten, five were to be nominated on the recommendations of the Calcutta Chamber of Commerce and non-official members of the Legislative Councils of Bengal, Madras, Bombay and the North-West Provinces. Thus there was to be an increase in the total number of members and in the proportion of non-official to official members. A modification was made of the system of nomination in such a way as to introduce the principle of election tentatively in practice.

To this enlarged legislature were given greater powers. The annual financial statement, the budget, had henceforth to be regularly placed before the legislature and members were allowed to discuss it generally, and express their opinion on it as a whole. However, power was not given to move any resolution or divide the Council on any matter concerned with the budget. The asking of questions was authorized by this Act, but the power of putting supplementary questions was not conceded.

The Act of 1909 was an important step in Indian constitutional history. That year saw the introduction of what are known as the Morley-Minto reforms. India had passed through a big wave of nationalistic agitation and some of her prominent political leaders were incarcerated. An insistent demand for the recognition of Indian public opinion as the controlling factor in Indian administration was sought to be met by the Indian Councils Act of 1909. The most important clause of this measure referred to the improvement of the legislature. The size of the Councils was materially enlarged, the maximum number of members of the Governor-

General's legislature being raised from sixteen to sixty. They were to be partly elected, partly nominated. An official majority was, however, deliberately maintained in the central legislature, only twenty-seven out of the additional sixty members being elected, and the remaining thirty-three together with the eight *ex officio* members being nominated by the Government. The principle of election which was only indirectly accepted in 1892 was now openly and explicitly introduced.

The powers and functions of the Council were increased. The budget could be discussed very generally under the law of 1892. Henceforth resolutions could be moved upon any of its items and the Council could be divided upon them. Resolutions upon matters of general public importance might also be proposed and discussed and a division on them was allowed to take place. Certain subjects could not be discussed by the Council at all. Any resolution could be disallowed by the Governor-General, who acted *ex officio* as the president of the Council. Further, the right of interpellation was extended by allowing the member who put the original question to ask a supplementary question.

All these reforms introduced by the Act of 1909, though in themselves marking a distinct step in advance, had absolutely nothing to do with the introduction of responsible government. Lord Morley's clear disclaimer about any intention of introducing parliamentary government in India is famous. There was no question of subordinating the executive to the legislature even to a slight extent. However, there was a distinct endeavour to associate the latter with the former more closely than before. Opinions expressed by the elected members of the legislature were expected to indicate clearly the direction of the current of popular opinion and the Government, if they so pleased, might modify their policy to accommodate themselves to the popular viewpoint. The Montford Report clearly states that the Councils were more effective than they knew.

The exact measure of such indirect influence cannot be assessed. That it may have been to a certain extent real may not be denied, nor can it be combated, on the other hand, that such an influence was bound to be extremely uncertain, if not illusory, and that its effectiveness, in whatever small degree, was dependent rather upon the courtesy it could evoke than upon the assertion of a right. Still, the Morley-Minto Reforms were welcomed by some of the contemporary politicians as marking a definite step in advance in the history of India's constitutional development.

§3 AFTER THE ACT OF 1919

Five years after the Indian Councils Act of 1909, extraordinary circumstances arose in the world. The deluge of war swept away time-honoured institutions and tremendously affected

the moral and material condition of all important countries.

The Act of 1919 India, in common with other countries, came under the influence of the new forces. The momentous pronouncement of 20 August 1917, which declared the grant of responsible government as the final goal of British policy in India, the visit of the Secretary of State to India and the passing of the Government of India Act on the lines of the recommendations made in the Montagu-Chelmsford Report, are instances of this influence on the politics of India. The new Act was passed in 1919 and came into force from 1921.

The beginning of responsibility in the provinces The problem that was sought to be tackled by the Montford Report and also by the Government of India Act was a complicated one. The continuance of, a purely bureaucratic and paternal administration, completely irresponsible to the Legislature, was inconsistent with the announcement of 1917 and generally with the spirit of the times. On the other hand, the grant of full Dominion Status at one stroke was regarded as suicidal and fraught with the gravest danger. Between the two extremes the Reforms sought a via media. A beginning in responsible government was to be made under proper safeguards. The most suitable field for making the experiment was considered to be the province.

Reform of the central legislature The Central Government was to be left out so far as the introduction of any degree of responsibility was concerned. However, the central legislature was to be considerably enlarged and democratised and larger powers were to be granted to it, so that the net practical, if not legal, result of these altered circumstances would be in the direction of making the Government of India more susceptible to popular opinion. With this end in view, the whole of the central legislature was thoroughly overhauled. For the first time, a bicameral system was introduced, following the invariable practice of most of the important western countries. The old supreme Legislative Council was replaced by two bodies, one, the Legislative Assembly and the other, the Council of State.

—The Montagu-Chelmsford Reforms have now been superseded by the Act of 1935. When, in accordance with the provisions of that Act, the Federation of India comes to be established, the Central legislature will be constituted on entirely different lines. However, till the time that portion of the Act becomes operative, the central legislative chambers as they have existed since the Act of 1919 will continue to function. Their constitution, powers, procedure, etc., during the transitional period have been defined in the Ninth Schedule of the Act of 1935. A detailed account of the two chambers as they exist today is given in the following sections.

XVI. THE CENTRAL LEGISLATURE. THE EXISTING CHAMBERS

§1 THE COUNCIL OF STATE

THE Council of State in India corresponds to the upper chamber of other countries. The total number of its members is 60. Out of these, 33 are elected by the different constituencies and 27 are nominated by the Government. Of the nominated members, not more than 20 are to be officials.

The Council of State is a part of the central legislature and its electorate is comprised within the territorial limits of the whole of British India. Elections are not however held on a general ticket throughout the area. The existing political divisions are taken as units, and seats are assigned to them approximately in proportion to their population, to their territorial extent and so on. The total elected number of thirty-three is thus distributed among the various provinces which are taken as electoral units. A similar distribution of nominated seats also takes place.

The great diversity of political and economic conditions in the various provinces makes a uniform franchise for a chamber of the central legislature almost an impossibility. The franchise for the Council of State therefore is different in the different provinces. The variation is, of course, intended only to equalize the conditions of the franchise as far as possible by taking into account the particular economic or political situation of each province and correcting and modifying the franchise in the light of those conditions. This body is intended to serve the purpose of an upper and revising chamber and therefore to consist of persons who have large vested interests in the land. They are expected to be conservative enough to counterbalance the radical freaks of a demos. The qualifications are therefore so contrived as to ensure that the majority of the members will belong to the richest strata of society, a small number being allowed for intellectuals.

In the Presidency of Bombay (i) persons who pay income-tax on an annual income of not less than Rs 30,000, (ii) persons who are owners of land, the land revenue dues of which are not less than Rs 2,000 per year, (iii) persons who are Sardars or Talukdars or Damaidars or Inamdars and recognized as such by the Government, are entitled to have a vote. The object and the effect of this high franchise are clear. It excludes anyone who is not very wealthy or who is not a scion of an aristocratic family. The intellectual element is supplied by the further provisions that (iv) all persons who have been once president or vice-president of a Municipality, (v) president or vice-president

of a District Local Board, (vi) persons who have been members of the Senate or fellows of a University, (vii) persons who have been members of any legislative body in India, (viii) persons who enjoy the title of Mahamahopadhyaya or Shams-ul-Ulema, have also a right to vote. These provisions have made it possible for comparatively poor persons to contest the seats of the Council if they have to their credit some public work and influence as demonstrated by their possessing any of these qualifications.

In the elections of 1925 the total electorate for the Council of State numbered 32,126, of which Burma contributed no less than 15,555. If representatives from Burma are excluded, the remaining thirty-two members of the Council of State were elected by only 17,000 voters spread over the whole of British India. This position had not appreciably changed in the subsequent election which was held in 1930.

With the exception of this small intellectual and to a certain extent democratic element, the Council of State **It is an oligarchical body** has a predominantly oligarchical character. It therefore possesses all the characteristics that are the distinguishing features of oligarchy. It is conservative in its formation. It is suspicious of progress. Its outlook is generally narrow. Representing as it does the vested interests in the state, it is inclined to be self-centred and self-protecting. Not being returned by an extensive electorate it has a tendency to be exclusive in its outlook and to be unaffected by the currents of popular opinion. The small elected majority of five is not calculated to lessen the consequences of the oligarchical nature of the body. The tenure of the Council of State is five years.

For any legislature the position and status of the president **President** are matters of important consideration and privilege. In the case of the old Supreme Legislative Council, the Governor-General was the *ex officio* president. In the new dispensation of the Reforms this privilege has been taken away from the Governor-General. The president of the Council of State is nominated by the Governor-General, and till very recently he was invariably an official. At present, however, a non-official has been selected to hold that office. The Council of State is denied the privilege of electing its own president, a privilege which is enjoyed by the Legislative Assembly.

A reference has already been made to the different kinds of **Functions and powers:** powers which a legislative chamber can possess. The Council of State has been given full legislative powers. **i. Legislative** Every Bill which has to be passed into an Act must receive its assent. Any member, official or non-official, may introduce a Bill for the consideration of the House which may or may not pass it. No measure can be incorporated into the law of the land unless the Council of State has given its sanction to it. It enjoys in this respect the same powers as are enjoyed by the Legislative Assembly.

It can exercise control over the administration by moving resolutions or adjournments or votes of censure, or by putting questions and supplementary questions. Fifteen days' notice is required for a resolution. The Governor-General can disallow any resolution if he feels it necessary to do so in the public interest. Motions for adjournment must refer to definite matters of urgent public importance and of recent occurrence. Questions and supplementary questions to elicit information on points in the routine of administration can be put by members to the executive officials. On matters affecting the relations of the Government with foreign states or Indian Princes or on those matters which are *sub judice*, no questions can be asked and no resolutions can be moved. The president can disallow a question or supplementary question. He can also disallow a motion for adjournment.

Lastly, the financial powers of the Council of State have to be understood. The Council of State is avowedly a body of elders, oligarchical in character and serving as an upper chamber. It has only a remote acquaintance with popular sentiments and desires. The second chambers in western countries have not the same thorough control over the nation's purse as the lower chambers possess. They are regarded as inherently unfitted to exercise this power because of their vested interests, because of their narrow representative character and because of the general conservative outlook that pervades all their thoughts and acts. The House of Lords in England, for instance, cannot initiate any money bill, and after the legislation of 1911 cannot claim equal rights with the lower chamber in financial affairs, it has been disarmed of the privilege of persistently opposing and obstructing the passage of the Finance Bill after it has been passed more than once by the lower body, the Commons.

Following this sound constitutional precedent, the Indian upper chamber is denied certain privileges in financial matters which are granted to the lower chamber. The budget is to be presented to both bodies on the same day. Both of them can discuss it thoroughly, but the voting of particular grants demanded by the heads of various departments is a special duty and privilege of the Assembly. These are not submitted to the Council of State after they have been voted upon by the Assembly. The latter body is in this respect supreme, subject to the certifying veto of the Governor-General.

After the voting of grants, ways and means of revenue have to be considered. Money has to be found for the expenditure that is voted, and all proposals for taxation are embodied in a Bill known as the Finance Bill. This Bill has to be passed by the Assembly and is then sent up to the Council of State for its assent like any other legislative Bill. The Council may pass the Bill as it is or introduce amendments, which must be

acceptable to the originating chamber. In a deadlock the Governor-General's extraordinary powers can be exercised for preserving the proper conduct of the administration.

The Council of State's financial powers are therefore as follows. The budget is presented to it at the same time as to the Assembly. It has the right to hold a general discussion on the budget and generally on the financial policy of the state. Its legislative powers being co-ordinate with those of the Assembly, the Finance Bill, which contains all proposals of taxation, has to be submitted for its assent and can be modified or even rejected by it. The power which the Council of State does not possess is that of voting supplies or grants, demands for which are made by the heads of the various departments separately. That is the exclusive privilege of the Assembly.

It is interesting to note that the Council was originally intended to be a predominantly Government body containing a clear official majority, so that any measure required by the Government could be easily passed. The Joint Parliamentary Committee however discountenanced such a proposal as reactionary and discordant with the spirit of the Montford Reforms. An endeavour was then made to constitute a real second chamber corresponding to similar bodies in other countries. The elected non-official majority, though definitely introduced, was made extremely small, and the franchise was pitched so high as to ensure an essentially plutocratic character for its major portion.

The experience of the working of the Council during the last seventeen years has revealed and confirmed the existence of the usual antagonism and cleavage between the view-points of a democratic chamber and those of an oligarchical house. A cent per cent increase in the salt-tax, which was proposed in the budget by the Finance Member and which was vehemently opposed by the Legislative Assembly, was approved of by the Council of State. Nor could the Assembly's antagonism to the Princes' Protection Bill find any support in the Council of State. In fact, a constitutional crisis in the real sense of the word has not yet occurred at all. On crucial occasions of conflict between the comparatively democratic Assembly and the bureaucratic Government, the oligarchical Council of State has till now invariably thrown itself on the side of the Government.

Even in free countries, a congregation of vested interests is always nervous of the progressive democratic impulse, and is opposed to it. In a conquered country like India the instinct of self-preservation is immensely strengthened and naturally induces intense caution on the part of the aristocratic class. Critics of the Council of State have every reason to deprecate the formation and constitution of a body which is inevitably

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drawn into an alliance with the bureaucracy as against the declared wishes of the popular chamber.

STATEMENT SHOWING THE COMPOSITION OF THE COUNCIL OF STATE AS IT STOOD WHEN THE SIMON COMMISSION REPORTED¹

Constituency	Nominated		Elected					Total
	Officials	Non-officials	Non-Muslim	Muslim	Sikh	Non-communal	European commerce	
Government of India	11 ²							11
Madras	1	1	4	1				7
Bombay	1	1	3	2		..	1	8
Bengal	1	1	3	2			1	8
United Provinces	1	1	3	2				7
Punjab	1	3	1	2 ⁴	1			8
Bihar and Orissa	1		2 ⁴	1			...	4
C P and Berar		2 ⁴				1		3
Assam				1	-			1
Burma						1 ^s	1 ^s	2
N-W F Province		1						1
Total	17	10	16	11	1	2	3	60

§2 THE LEGISLATIVE ASSEMBLY

The lower and more democratic chamber in the Indian Constitution legislature is known as the Indian Legislative Assembly. This body consists of a total of 144 members of which 103 are elected and 41 nominated. Of the latter not more than 25 are to be officials. It is thus evident that both in its size and in the larger proportion of elected to nominated members the Assembly is distinguished from the Council of State. The total number of its members is distributed among the various provinces according to their population and importance. The existing political divisions of the territory of India are accepted as the units for its election, and as it is a body larger and more democratic than the Council of State and possesses a wider electorate, the political sub-divisions of the province are further taken as units for the distribution of seats and for election, unlike the Council of State for which, in the non-Muslim constituency, the province as a whole is the unit.

¹ Report, vol I, p 167

² Including the president

³ One of these is nominated as the result of an election held in Berar

⁴ At alternate general elections there are three non-Muslim seats for Bihar and Orissa and only one Muslim seat for the Punjab

⁵ The distribution of nominated seats may be varied at the discretion of the Governor-General but the officials cannot exceed twenty

Thus the number of elected members representing the Presidency of Bombay in the Assembly is 16 out of its elected total of 108. These are elected from constituencies, the territorial extent of which corresponds to the Commissioners Divisions, or, in the urban constituency of the City of Bombay, to the extent of the city.

There cannot be a uniform franchise for the Assembly **Franchise** throughout India. It varies in the different provinces according to local conditions, an attempt being made to establish similar real conditions in all the provinces. In the Province of Bombay, (i) all persons who pay income-tax, (ii) all persons who pay an annual land revenue not less than Rs 37-8 in the Panch Mahals and Ratnagiri Districts and not less than Rs 75 in the rest of the province have been given the franchise for the Assembly. It will be seen that this franchise is much wider than that for the Council of State and narrower than that for the Bombay Legislative Council. Members possessing a wider outlook, and elected from a wider electorate are required to discuss all-India questions, yet the franchise cannot be too high if a largely democratic and representative character is to be maintained. The Assembly must combine in itself the characteristics of being a well-proportioned all-India body, and also a predominantly democratic body, unlike the oligarchical Council of State.

The total electorate for the Legislative Assembly numbered 1,415,892 at the time of the last elections which were held in the autumn of 1934. Thus its 105 members were returned by less than fifteen lakhs of voters in British India, the total population of which is nearly twenty-five crores. There has been very little change in this position since then. The tenure of the Legislative Assembly is three years, though the Governor-General can extend it in his discretion. This power has been exercised year after year since 1937 and the Assembly elected in 1934 is still functioning today.

It was provided in the Act that the first president of the **President** Assembly would be a non-official member of Parliamentary experience nominated by the Governor-General to hold office for the first four years. As has been stated already, the president of the Indian legislature before the Montford Reforms was the Governor-General *ex officio*. The president of the Council of State is a nominated member, and was an official till recently. The Assembly has been given the privilege of electing its own president from amongst its members since the Reforms. On the expiration of the first four years, during which the affairs of the Assembly were to be guided by an experienced and well-informed Parliamentarian and during which conventions and traditions could be set up by him, the right of election was to be exercised and thenceforth the chair

of the president was to be adorned by one on whom the choice of the Assembly fell Sir F. Whyte was the first nominated president. Mr V. J. Patel was the first elected president and he was re-elected for a second term of office

The election of its own Speaker has been an important and time-honoured privilege of the House of Commons The historical evolution of this office is interesting From being the spokesman and leader of his colleagues and a channel of communication between them and the monarch, the Speaker has now come to be a non-party dignitary vested with all the intricate functions and powers that are necessary to guide the deliberations of a democratic legislative chamber Constitutionally, the Speaker's or President's position carries great responsibilities with it He presides over the meetings of the body and can adjourn them He maintains order at the time of discussion, gives his rulings on disputed points of procedure, and has to dispose systematically of the business on the agenda He maintains the dignity of the House by controlling members in the use of their language, he has to protect carefully the privileges of the House from any outside encroachment He admits questions and grants permission to move adjournments In case of an equality of votes the president can give his casting vote In short, to have its own elected president is one of the most cherished and one of the most useful privileges enjoyed by a legislature

That privilege was conceded to the Legislative Assembly by the Act of 1919 A deputy-president is elected to preside in the absence of the president. The salaries of both the president and deputy-president are voted by the Assembly Both cease to hold office when they cease to be members of the Assembly and may be removed from office by a vote of the Assembly and with the concurrence of the Governor-General

The powers and functions of the Assembly are to be considered in the light of the classification that has been given already The legislative powers of this body are co-ordinate with the powers of the Council of State No Bill can be deemed to have been passed into an Act having force of legality unless it is passed by both bodies and has received the Governor-General's assent All legislation must therefore pass through the Assembly, which can also move resolutions, votes of censure, motions of adjournment any of its members can put questions and supplementary questions in the same manner as the members of the Council of State It can thus effectively establish its supervising authority and critical control over departmental administration and indicate its political predilections.

The Assembly has, however, a wider power in the domain of finance than that possessed by the Council of **Financial powers** State. The budget has of course to be presented to this body by the Finance Member as he used to submit it to its predecessors in pre-Montford-Reform days. It can also carry on a general discussion of the budget and of the financial policy of the Government, as before. But now it does not stop with moving resolutions and dividing the Council on them, as it did between 1909 and the introduction of the Reforms of 1919. For the first time in Indian constitutional history, power is given to the legislature to vote the grants demanded in the budget. This has to be clearly understood.

The position after 1909 was peculiar. In the first place, **Pre-Reform period** the Supreme Legislative Council contained a clear official majority, so that any amounts of money that the Government wanted could be easily secured by issuing an executive mandate concerning the manner in which official members should vote. And even if an official majority had not existed, matters would not have been much better, for the power that was conceded to the legislature in regard to the budget amounted only to the liberty of expressing an opinion on a particular item if allowed to do so. This expression of opinion was not binding upon the Government. It had not the authority of law.

On the other hand, the power of voting supplies, partially **After the Reforms** granted under the Montford Reforms, is a different thing. It has been already explained that complete control over the country's finance is one of the essential conditions of parliamentary government. It has not been introduced in the central administration of India. Yet an endeavour is made to create some shadow of parliamentary government by conceding to the legislature the privilege of voting a part of the total supplies required by the Government of India. The money required for certain items cannot be spent unless it is voted by the Assembly or is permitted to be spent by the certification of the Governor-General.

The proposals of the Government for the appropriation of **Non-votable items** revenues and moneys are divided into two parts, votable and non-votable. Grants coming under the latter head are not put for the Assembly's vote, nor can they be discussed by the legislature unless the Governor-General directs. Some very important subjects are included in this group. Interest and sinking fund charges, salaries and pensions of persons appointed with the approval of His Majesty or the Secretary of State, salaries of Chief Commissioners, expenditure under the heads ecclesiastical, political and defence, are all subjects which are non-votable. They cover about eighty-five per cent of the total expenditure.

Proposals for the appropriation of revenues in the subjects other than these specified ones are submitted to the vote of the Assembly in the form of demands for grants. The Assembly may assent to or reduce or refuse a grant. Grants that have been thus reduced or rejected cannot be obtained unless the Governor-General feels that they are absolutely necessary for the discharge of his responsibilities towards Parliament and so restores them by his power of certification. The Joint Parliamentary Committee made it clear that the power of certification was intended to be real, inasmuch as voting of the budget was not accompanied by any degree of political responsibility and the Governor-General-in-Council continued to be solely responsible to Parliament for peace, order and good government in India.

With the creation of an Assembly containing a large elected non-official majority and possessing a fair representative character because of its election on a comparatively liberal franchise, and with the partial grant to this body of the power of voting supplies demanded by Government officials, it is no wonder that the centre of political importance in the constitution of India has now definitely shifted to the Indian Legislative Assembly. The Council of State does not enjoy the privilege of voting grants. It can only approve of and discuss the Finance Bill.

Besides, the Assembly has power to appoint a standing Finance Committee, (i) to scrutinize proposals for new votable expenditure, (ii) to sanction allotments out of lump sum grants, (iii) to suggest retrenchment and economy in expenditure and (iv) generally to assist the Finance Department by advising on such cases as may be referred to it. The Committee consists of ten members elected by the Assembly with a chairman nominated by the Governor-General.

At the commencement of each financial year there is also constituted a Committee on Public Accounts, consisting of not more than twelve members of whom not less than two-thirds are elected by the non-official members of the Assembly. The Finance Member is the chairman, and has a casting vote in case of an equality of votes. The Committee has to scrutinize the audit and appropriation accounts of the Governor-General-in-Council and satisfy itself that the money voted by the Assembly has been spent within the scope of the demand granted by the Assembly. It has also to bring to the notice of the Assembly every reappropriation from one grant to another, every reappropriation within a grant, and all such expenditure as is desired by the Finance Department to be brought to the notice of the Assembly.

3 PROCEDURE OF WORK IN THE CENTRAL LEGISLATURE

Summons for meetings —The time and place for the meeting of the central legislature are fixed by the Governor-General. A summons to attend the session is issued to each member by the Secretary of the Legislative Chamber

Oath and president's election —If a legislature is meeting for the first time after new elections, its members are first of all called upon to take the Oath. Immediately thereafter they proceed to elect their president and then their vice-president. Both these elections are not finally valid until they have been approved of by the Governor-General

At the commencement of each session the president must nominate from among the members a panel of not more than four chairmen

In the absence of the president, the vice-president presides. If both are absent they can request any one of the panel of chairmen to preside over the meeting

Allotment of days for business —The Governor-General allots definite days for the transaction of non-official business. On other days only official business can be transacted unless the Government otherwise directs

A list of business, or agenda, is dispatched to each member before the commencement of the session

Quorum —Twenty-five members form the quorum for a meeting of the Legislative Assembly and fifteen members for that of the Council of State

Questions —The first hour of each meeting is devoted to the answering of questions. The number of questions which a particular member may ask on any day is limited to five. For each question not less than ten clear days' notice is required ordinarily. In special circumstances, however, short-notice questions may be allowed. The president has power to disallow a question if in his opinion it constitutes an abuse of the member's right

Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. But such questions can be disallowed by the president

Resolutions —A member who wishes to move a resolution must ordinarily give fifteen clear days' notice. The resolution must pertain to a subject of general public interest and may be disallowed by the Governor-General. Amendments can be moved by any member to a resolution. Non-official resolutions can be taken only on days allotted for non-official business. Their order of priority is determined by ballot

Adjournment motions —Leave to propose an adjournment motion for the purpose of discussing a definite matter of urgent public importance must be asked immediately after questions

have been answered. If more than thirty members rise in support, the president intimates that the matter will be taken up for discussion at 4 o'clock in the afternoon. The debate must terminate at 6 o'clock and thereafter no question in respect of that motion shall be put

Legislation —Generally, a month's notice is required for leave to introduce a Bill. Every Bill is required to pass through the following stages

(i) A member who wants to move a Bill must first seek leave of the chamber to introduce it. In doing so he may make a brief explanatory statement. An opposing member is also allowed to make a few remarks to explain his position. Then without further debate the question is put and if the majority of members are in favour of leave being granted, the mover forthwith introduces the Bill.

However, the Governor-General may order the publication of a Bill in the *Gazette* although no motion has been made for leave to introduce it. In that case such a motion is not necessary and if the Bill is afterwards introduced it is not necessary to publish it again.

(ii) After a Bill has been introduced it is published in the *Government Gazette*.

(iii) After a Bill has been introduced and published, the member in charge moves that the Bill be read for the first time. Only the general principles are discussed on this occasion. Discussion on details is not permitted.

(iv) After the first reading is passed, any one of the following motions may be made

(a) that the Bill be read a second time,

(b) that the Bill be referred to a Select Committee, and

(c) that the Bill be circulated for eliciting public opinion.

If (c) is accepted, the Bill may be referred to a Select Committee after public opinion has been elicited.

The Select Committee may hear the necessary evidence and usually has to submit its report, with dissenting minutes, if any, within two months. The report and the minutes are published in the *Gazette* and also circulated among members. The report is then presented to the legislature by the member in charge of the Bill with a brief explanatory speech.

(v) After the Select Committee's report is presented, the mover proposes that the Bill be read a second time. If this motion is agreed to by the majority, the president has to submit the Bill clause by clause separately to the vote. Any member can move an amendment to any clause with seven clear days' notice. Votes are first taken on the amendments and then on the clauses as they originally stood or as they have been amended.

(vi) After the second reading is finished the mover proposes

that the Bill be read for the third time Only verbal amendments are allowed on this occasion and no notice is required for them.

Every Bill is required to be passed three times in three readings as described above

A Bill passed by one chamber must be sent to the other chamber and there it has to pass through the same procedure

After the Bill has been passed by both the Chambers it goes to the Governor-General for his assent Only after that assent is given does the Bill finally become law

Budget—The budget has to pass through the following stages

(i) It must be presented to the legislature on such day as the Governor-General appoints A copy of it along with detailed estimates must be dispatched to each member at least seven days prior to the first of the days allotted for the general discussion of the budget

No discussion of the budget can take place on the day on which it is presented

(ii) After the budget is presented, the legislative body is at liberty to discuss the budget as a whole The Governor-General allots a definite number of days for this purpose This is the opportunity for members to criticize the general scheme and policy of the Government and the main principles of administration No motion is allowed at this stage and details are generally excluded from the discussion The Finance Member has a general right of reply at the end

(iii) After general discussion, the voting of demands for grants is undertaken Not more than fifteen days are allotted for this purpose and not more than two can be taken up by the discussion of any one demand

On the last of the days allotted for the voting of grants, the president must stop all discussion at 5 o'clock in the evening and forthwith put every outstanding demand to the vote of the chamber

A separate demand for grant is ordinarily made for each Government Department

The legislature can reduce or omit but not increase the amount demanded in a grant

§4 CONFLICTS BETWEEN THE TWO CHAMBERS

With the creation of two independent and co-ordinate bodies in the central legislature, the Government of India Act had to provide for the contingency of a conflict between the two Houses on any matter of legislation where consent of both the Houses is made obligatory by law. The contingency of a conflict is inherent not only in the duality but in the co-ordinate character of the central legis-

lature. Both have equal status and equal powers, and uncompromising differences between them have to be resolved by providing for some method where this equality will disappear. Such conflicts have taken place in all bicameral systems of legislature, and solutions for the consequent deadlock have also been provided. The monarch's unrestricted right of creating as many peers as he likes has proved the safety-valve of the English constitution on more than one occasion, though the Parliament Act of 1911 has made resort to this power unnecessary. Special clauses have been included in the Government of India Act of 1919 to end differences between the Indian legislative chambers when they arise.

After a Bill has been passed by either of the chambers it is sent to the other chamber for its assent, without which the Bill cannot become an Act. If the other chamber accepts the Bill without modification, there is no hitch. If it introduces any amendment, then the Bill is sent back to the originating chamber with the amendment. If the amendment is acceptable to the originating chamber, matters pass off smoothly. The real conflict arises on occasions when a Bill passed by one chamber is totally rejected by the other or is so altered by it as to prove unacceptable to the first chamber. Various methods are provided to avert the conflict or to end it when it comes. For example

(i) When a Bill is introduced in either chamber and before it is referred to a Select Committee of the House in the second reading, the originating chamber may request, by a resolution, the other chamber to nominate some of its members to the Select Committee, so that while the Bill is on the anvil and under the searching consideration of the Committee, members of the other chamber can take part in the discussion and give expression to their views so as to enable the Bill to be modified in the light of their opinion. In this way future opposition may be anticipated and a probable conflict may be averted if the motion to appoint a Joint Committee is accepted by both Houses. On such a Joint Select Committee an equal number of members from both the Houses will sit, its chairman will be elected by itself and will have only one vote, and in case the votes are equal, the question will be decided in the negative. The time and place of the meeting will be fixed by the president of the Council of State.

(ii) When there is a difference of opinion between the chambers, they may agree to a Joint Conference where each chamber will be represented by an equal number of members. The procedure of the Conference will be determined by itself. The time and place of its meeting will be fixed by the president of the Council. An

amicable settlement may be arrived at as a result of the discussions in the Conference, and the deadlock may be ended.

(iii) As a last resort, if the chambers are in a state of pronounced mutual disagreement, when a Bill as passed by the one is not approved of by the other and when the latter's amendments and alterations are not acceptable to the originating chamber, this last body may report the fact of the disagreement to the Governor-General or allow the Bill to lapse. In case intimation of the difference is given to the Governor-General, he may convene a Joint Sitting of both the chambers by notification in the *Gazette*. The president of the Council of State shall preside and its procedure shall apply. The members present at a Joint Sitting 'may deliberate and shall vote together upon the Bill as last proposed by the originating chamber and on the amendments in dispute'. The majority of the votes of the total number of members present shall prevail and the Bill as passed by the majority, with whatever amendments may have been accepted, will be taken as if it had been duly passed by both the chambers. It is plain that in a Joint Sitting the Assembly will naturally be at an advantage on account of its larger numbers.

A slightly complicated state of things arises in connexion with the question of conflict when, in addition to the will of the chambers, a third force, the will of the Governor-General, comes into operation. In the cases above discussed the Governor-General was taken to be an impartial disinterested spectator. But occasions may arise—they have arisen in recent times—when in the conflict of opinion between the two chambers the Governor-General may take a keen interest and may cast in the weight of his authority on one side. He can then end the conflict by the use of the extraordinary constitutional weapons that are provided for him. The expedient of a Joint Sitting is useless for his purposes if his difference is with the Assembly, as that body would command in the Joint Sitting a majority of votes. When, therefore, the disagreement between the chambers is complicated by the disagreement of the Governor-General with either of them, it has happened in practice that the process of certification has been utilized for the removal of such a deadlock.

A concrete case will illustrate the point. The Princes' Protection Bill and the clause doubling the salt-tax in the Finance Bill of 1924 were disallowed by the Legislative Assembly. The Governor-General was interested in the passing of these measures. They were therefore sent up to the Council of State with the Governor-General's recommendation about the form in which they should be passed and were passed by that body. Thus there arose occasions of conflict between the Assembly and the Council, with the Governor-General interested in getting particular measures passed in spite of the opposition of the Assembly.

When the Bills as passed by the Council of State were not accepted by the Assembly, the Governor-General exercised his certifying power, gave his assent to them and the measures were taken to be legally passed. Apart from the usual constitutional provision of a Joint Select Committee or a Joint Conference or a Joint Sitting, the Governor-General's extraordinary executive authority has thus indirectly tended to serve the same purpose on certain occasions, when the Governor-General himself has espoused a particular cause.

XVII. THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

§1 NO PRINCIPLE OF RESPONSIBILITY

It has been explained already how a proper understanding of the relation between the executive and legislative parts of a country's administration is indispensable for estimating the reality of its democratic character. In a country like England with Parliamentary institutions, the subordination of the executive to the legislature is complete. And as the final goal of British policy in India has been announced to be the progressive realization of responsible government and the development of Parliamentary institutions, when the goal is achieved in practice the subordination of the Indian executive to the Indian legislature will also be complete. An attempt has to be made to view in a proper perspective the relations between the two parts as they exist in the present avowedly transitional period.

No consideration could of course be given to this problem before the completion of the Indian conquest and the settling down of its administration into peaceful routine. In the beginning of British rule, legislatures as separate bodies did not exist at all. And when they were introduced and as they were progressively developed during the latter portion of the nineteenth century, gradual additions were made to their powers. But the irresponsible character of the executive administration was maintained.

Even at the time of the Councils Act of 1909 the intention of even indirectly initiating something akin to Parliamentary government was expressly disowned. There was no question of the executive being controlled by the legislature. The latter at the most could indulge in declamatory rhetoric which very often 'fell on deaf ears and beat its head against stone walls', as Sir Surendranath Banerji would have said. The enlargement of the Councils was simply due to a desire for the greater association of Indians in the administration. There was no impulse of any progressive political principle behind it. The bureaucracy was responsible only to itself and in the last resort to the distant Secretary of State and the uninterested British Parliament.

The Act of 1919 introduced many important changes in other directions, but so far as the strictly legal position is concerned, it left unchanged the old relations between the executive and legislative parts of government. Even after the Act of 1935, the same position will be maintained.

as long as the Transitional Provisions are in operation and the Federation of India is not introduced.

In strict theory, the Governor-General-in-Council continues to be as autocratic as he was before. Neither he nor his colleagues are called upon to resign even after a regular vote of censure is passed upon them by the legislature. Their salaries and rules of service are beyond the reach of the people's representatives. They are not bound to accept any recommendation made to them by the legislature. Their responsibility is only to the British Parliament and they hold office during the pleasure of the Sovereign. The extraordinary legislative veto that is now given to the Governor-General, otherwise known as the power of certification, is intended to act as a corrective to any persistent obstruction on the part of the legislature. In short, the citadel of bureaucratic authority, so far as the Central Government in India is concerned, continues to be as strongly fortified as before according to the strict letter of the Constitution.

§2 INDIRECT INFLUENCE OF THE LEGISLATURE

This is, however, a purely theoretical position. Matters differ somewhat in practice, particularly since the Act of 1919. With legislatures enlarged and democratized, with an elected non-official majority created in them, with larger financial and deliberative powers conceded to them, and with the Viceroy's power of certification declared to be extraordinary, the indirect but none the less real influence of popular opinion as expressed in the legislature may not be entirely insignificant. The legislature cannot dismiss executive members but can certainly dismiss requests made by them for various grants necessary to keep some of the wheels of the machinery going. The refusal of such requests and the rejection or reduction of any of the demanded grants may indeed provoke a Viceregal resort to the extraordinary weapon of certification. That power may also be invoked for any other similarly rejected legislative measure. But unless certification ceases to be regarded and used as an extraordinary weapon and is invested with the routine familiarity that attaches to all normal instruments of government, administration by certification will be regarded as uncommon and abnormal.

Public opinion as focussed through representative legislative chambers carries a peculiar weight with it. It is the most disciplined and chastened expression of a self-conscious public will. To disregard a mobilized and concentrated force of this type would prove nothing less than suicidal to any normal government. No government with a human, moral basis and composition can be supported on props which press down those very moral and human elements that are the essence of its vitality. Legally, the Government of India are entirely independent of their legislature. In practice, on the

other hand, they have to be thin-skinned enough to be susceptible to popular opinion and endeavour to abide by its wish at least to a certain extent. Sir Malcolm Hailey, speaking some time back in the Legislative Assembly, was giving a description of the actual state of affairs when he described the Government of India as having become, after the Montford Reforms, responsive if not responsible to popular opinion, and its actions as having become indicative if not reflective of the popular view point.

An incessant use of the privilege of interpellation, of the **Influence of** power of moving resolutions and adjournments, of **publicity** discussing the budget and voting a part of it, and of the power of sanctioning all legislative measures, in short, an incessant use of the searchlight of publicity and critical investigation, is believed to go a long way in the direction of strengthening the hands of the legislature and making it the centre of political influence. The executive government has to gravitate towards this centre, perceptibly or imperceptibly. The elastic adjustment of its actions to accord with the surrounding political atmosphere may be dissembled by the garb of diplomacy yet a consolidated, sober and responsible popular will is a force which can only be disregarded on occasions of the utmost gravity when an administrative breakdown appears inevitable.

The degree of the indirect influence of the legislature upon the actions of the executive cannot be exactly estimated or evaluated. A reference has already been made to the statement in the Montagu-Chelmsford Report before the introduction of the Montford Reforms that such influence was very real. It may be that on some occasions the popular view as expressed in the legislature is respected and action taken in accordance with it. After the 'Act of 1919, the legislatures have ceased to be mock bodies, they have a good deal of representative character and somewhat larger powers. And, therefore, unless either the executive government has become an inhuman and lifeless machine, a mere abstraction of power and efficiency, or unless extraordinary vetoes like certification are domesticated into the normality of executive powers, the influence of the legislature over the executive cannot be ignored.

The experience of recent years has however clearly shown that no reliance can be placed on the effectiveness of such an indirect constitutional restraint. On more than one occasion, the views of the Legislative Assembly have been disregarded. Proposals vetoed by it have been restored. Grants refused by it have been reinstated. Resolutions passed by it have been neglected. The precarious nature of a power which is allowed only on sufferance and the existence of which is made dependent upon the frailty of a generous caprice has been amply demonstrated during the last few years. Indian public opinion demands the subordination of the executive to the legislature as a matter exercised as

of right and not merely allowed as an ambiguous privilege. And even if the quality and the reality of the legislature's indirect influence be asserted and proved to be great, the fact of its uncertainty and its allowance by mere courtesy detract to a great extent from its utility and value

COMPOSITION OF THE LEGISLATIVE ASSEMBLY AS IT STOOD
WHEN THE SIMON COMMISSION REPORTED¹

Constituency	Nomi- nated		Elected						
	Officials	Non-officials	Non-Muslim	Muslim	Sikh	European	Landholders	Indian com- merce	Total
Government of India	14	5 ²	..				...		19
Madras	2		10	3		1	1	1	18
Bombay	2	1	7	4		2	1	2	19
Bengal	2	2	6	6		3	1	1	21
United Provinces	1	2	8	6		1	1		19
Punjab	1	2	3	6	2		1		15
Bihar and Orissa	1	1	8	3			1		14
C P and Berar	1	1 ³	3	1			1		7
Assam	1		2	1		1			5
Burma	1		3 ⁴			1	..		5
Delhi			1 ⁴						1
Ajmer-Merwara			1 ⁴						1
N-W F Province		1				...			1
Total	26	15	52	30	2	9	7	4	145

¹ Report, vol I, p 168

² Nominated to represent the Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed Classes. The distribution of nominated non-officials may be varied by the Governor-General at his discretion. The official membership of twenty-six is a fixed number though its distribution can be varied by the Governor-General.

³ Nominated as the result of an election held in Berar which technically is not British territory.

⁴ These five seats are filled by non-communal constituencies.

PART IV

THE FEDERATION OF INDIA

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INTRODUCTORY

ONE of the basic concepts of the Act of 1935 is the establishment of an Indian Federation, incorporating British India and the Indian States. Part II of the Act is devoted to prescribing the details of the federal structure. But this Part was not intended to be given effect to simultaneously with the introduction of Provincial Autonomy on 1 April 1937. There were many difficulties in doing so. Lengthy negotiations and discussions were necessary before the requisite number of Princes could be persuaded to accede to the Federation. Besides, the scheme had evoked a very hostile reception in British India, and it could not have been enforced without creating a considerable amount of resentment and bitterness.

Meanwhile, England has been involved, since September 1939, in a war with Germany, and during the continuance of the emergency, highly controversial issues have naturally been shelved. In the middle of October 1939 the Viceroy announced that the federal scheme has been suspended indefinitely. He also stated that His Majesty's Government will, at the end of the war, be prepared to regard the scheme as open to modification in the light of Indian views. Consultation concerning the modifications with representatives of the different communities, parties and interests in India was also promised.

The following pages explain, first, the difference between unitary and federal states, and then go on to describe at length the relations that have existed between the Central and Provincial Governments in India from the Regulating Act to the Act of 1935 in the unitary framework of the Indian constitution. Then follows a brief account of the federal structure that has been defined in the Act of 1935. However, the reader must bear in mind that after the conclusion of the world war and before the scheme actually comes into operation, it may be materially altered in many particulars, and therefore the account given here may ultimately prove to be only of academic interest.

XVIII. UNITARY AND FEDERAL STATES

As it is proposed that the existing unitary constitution of India should be transformed into a federation in the near future, it would be helpful to make at the outset a brief reference to those two types of constitutions, and to show the main points of difference between them. Both types are found to be existing and functioning in contemporary life. For example, England, France, Italy, Germany and Japan are unitary states, the United States, Canada, Australia and Soviet Russia are federations.

§1 THE UNITARY STATE

A unitary state is one in which all governmental authority **One supreme Sovereign** is concentrated in one supreme sovereign body. This body is vested with exclusive control over all matters, whether civil or military, concerning the state, and can pass laws, take executive action, impose taxation and incur expenditure in respect of any subject. There are no statutory limits on its jurisdiction and its authority, and it is responsible for making suitable arrangements for the efficient governance of the whole nation.

It would be, of course, physically impossible for such a **Provinces may be formed by it** centralized organization to exercise direct administrative powers over a large geographical area. The difficulty becomes all the greater in a country which is huge in expanse and population. Even in a unitary state, therefore, smaller territorial divisions have to be, and are, formed for the convenience of administration. A specific sphere of activity is demarcated for them, and within that sphere they may be allowed considerable liberty of judgement and action.

Still, the constitutional position is quite clear. These units **They are subordinate** or provinces or states are merely the creations of the sovereign body, and unquestionably subordinate to its mandates in all respects. They owe their existence, powers and status entirely to the central government. By assigning some important administrative work to such political divisions, that supreme functionary does not abdicate any of its ultimate authority but only delegates some of its powers, under certain conditions, to a subordinate agency. It is free to resume at any moment what it has thus delegated, and is competent to exercise over-riding jurisdiction over all the actions and policies of its subordinates.

In short, in a unitary state there are no equals of the central government even in a limited sense. Its authority is supreme, and its will is not hampered by the existence of rights and privileges which it must respect and cannot touch.

§2 THE FEDERAL STATE

On the other hand, a federation embodies principles which are fundamentally different, and results from the operation of certain psychological and sentimental forces. Even in its constitution there does exist a central government which is possessed of large powers. But it does not enjoy that all pervading absolute authority which is postulated for it in a unitary state.

There may be living, in the same neighbourhood, a group of small but independent national units, each having its own language, racial characteristics, and even religious beliefs. Yet, in spite of these differences, these states may also possess some common heritage, common affinities, common economic and political interests, and a common culture in the wider sense. They may therefore feel attracted towards each other for co-operative action by the impulse of a larger collective development. Or, even if such an inner similarity and tendency towards fusion are not present, the danger of a common enemy who threatens all of them may naturally tend to bring the neighbours together in a closer alliance.

Such states, while desiring to preserve their individuality, may also be eager to form a union with others for certain specific purposes. They may be prepared to part with some of their sovereign powers in order to facilitate the creation of a large composite sovereignty which would encompass all of them. A sort of political contract, whether actual or implied, may naturally follow from such a situation. It would provide the foundation and structure of a federal polity, and define clearly the relations of the contracting parties.

It will be realized that the new political master, in the shape of the central government in a federation, is not an alien imposition, but is created out of themselves by the uniting nations and consists entirely of their representatives. The jurisdiction and authority of this superior are not unlimited, but are carefully demarcated and defined in the constitution itself. Within that sphere, it demands and obtains the unswerving loyalty of all the constituent units. Outside that sphere, it has no power of control and cannot interfere with the working of the provincial governments, which enjoy complete freedom of action and policy.

Thus the provinces in a federal constitution have certain inherent rights and privileges guaranteed to them by the constitution itself. They are inviolable by the central authority. These component units do not exercise their power merely in virtue of delegation by a superior from whom it is really derived. The distribution of governmental work between them and the centre is effected by

the constitution to the framing of which they have been a party and to which they have voluntarily subscribed.

The federal arrangement is particularly suitable to populations which are not essentially homogeneous and yet have so many things in common that they form a distinct nationality in a broad sense, as is the case with India. It maintains the independence of the different constituents and also brings them under the control of a vigorous central government. Unity without a deadening uniformity, diversity without disruption, free association without suppression are the chief objectives and the *raison d'être* of the federal union.

XIX. THE UNITARY GOVERNMENT: BEFORE THE MONTAGU-CHELMSFORD REFORMS

§1 THE CREATION OF A CENTRALIZED GOVERNMENT

It has already been stated that in the earlier days of the history of the East India Company, the Governors of the three factory areas of Madras, Bombay and Calcutta were politically independent of each other. But they had no territory to govern and their duties were of a purely commercial character. After the Company began to drift into politics and war from the middle of the eighteenth century, a centralized control over its Indian affairs was found to be necessary. It was provided in 1773 by the Regulating Act which made the Governor of Bengal the Governor-General of Bengal. The Governors of Madras and Bombay were subordinated to this new superior, particularly in respect of their transactions with Indian rulers and in questions of war and peace. This is the beginning of the unitary administrative system in India.

However, it was the Act of 1833 that established a rigorous and all-inclusive centralization. The authority of the Governor-General was made co-extensive with all the area comprising the British possessions in India. Even after the Regulating Act, the provinces of Madras and Bombay were in the enjoyment of legislative power within their respective territorial limits, and also some amount of freedom in their ordinary internal administration. Both these privileges were taken away from them by the Act of 1833. In the words of the Simon Commission, 'down to 1921 the Governor-General-in-Council was, inside British India, the supreme authority in which was concentrated responsibility for every act of civil as well as military government throughout the whole area'.

This did not mean that the provincial divisions were no longer considered necessary or that they were abolished. In a country of large distances and population like India, their existence was both essential and inevitable. They 'had most important work to do, for in their hands lay the day-to-day task of Administration, and not even the remorseless energy of a Curzon could inquire into and seek to supervise all the countless matters which made up so burdensome and multifarious a charge. But these provincial governments were virtually in the position of the agents of the Government of India. The entire government system was, in theory, one and indivisible. The rigour of a logical application of that conception to administrative practice had, gradually

**Subordination
of the
Provincial
Governments**

been mitigated by wide delegation of powers and by customary abstentions from interference with the agents of administration. But the principle of the conception was still living and operative, and it blocked effectively any substantial advance towards the development of self-governing institutions.¹

It is thus clear that the Indian provinces did not possess any **No federal status** degree of federal inviolability or independence. They were entirely subservient to the Central Government. There was no sphere, however small, which could be said to have been reserved for their exclusive jurisdiction nor were any rights recognized as inhering in them. The old Presidencies of Madras and Bombay had certainly a higher status than that of the Lieutenant-Governors' and Chief Commissioners' Provinces which were subsequently created. They had a more elaborate system of government and even retained some of the relics of the independence which they had enjoyed before the Regulating Act. But these were only minor concessions, which did not affect the fundamental position that the Governor-General-in-Council was the unquestioned supreme authority in all matters over the whole territory of British India. The provinces were regarded merely as the creations of the Central Government. The only consideration which weighed in fixing their boundaries was administrative convenience. Their number could be reduced or increased, their territorial limits altered, and the arrangements of their governance varied and modified, by the Government of India if they chose to do so subject of course to the sanction of the Secretary of State.

It is necessary to understand the relations between the Central and Provincial Governments under these circumstances in greater detail. As the Montagu-Chelmsford Report has pointed out, the bonds that connected the Government of India with local Governments were woven of three different strands, legislative, financial and administrative. Control was exercised in regard to all these three heads, and it will be convenient to describe each one of them separately. The point to be remembered is the conception of the Government of India as one indivisible whole, responsible to the parliament of Britain for the proper discharge of its duties. The financial strand is obviously the most important, it also determines to a considerable extent the scope of control and supervision in the legislative and administrative spheres.

§2 CENTRAL CONTROL OVER PROVINCIAL FINANCE

The East India Company was a commercial corporation and its accounts were maintained on commercial principles. This

¹ *Simon Commission Report*, Vol I, p 112.

was the foundation for the policy of centralized finance even after the commercial character of the East India Company had disappeared and it had definitely assumed political responsibility. Full control over the revenues of the whole of India was retained by the Central Government in its own hands, in theory at least.

Central control over Provincial finance: All sources of income and all the amounts of such income, collected in any part of British India, were credited to the Government of India's treasury. Revenues from all parts of the country converged into one reservoir and from this reservoir money flowed back in large or small amounts to serve the diverse needs of the administration, including expenditure of the provinces. It is obvious, therefore, that the provinces in this instance were merely managing agents for the Government of India. The sources of taxation, the amount of taxation, the manner of collection and the authority for expenditure were all dictated from headquarters. The Provincial Governments had simply to do as they were asked. They had no interest in the collection of taxes. As the executive agents of the Government of India they mechanically carried out their superiors' mandates.

The Government of India distributed money among the various provinces to enable them to fulfil the obligations delegated to them for the convenience of administration. The principle of distribution was not to make the grant proportionate to the amount of income yielded by the province. The needs of the province were considered, and the grant was fixed at a figure approximately commensurate with the needs. Such wholesale centralization, in an extensive country like India, imposed an extremely heavy burden of financial administration upon the Government of India.

General Strachey pointed out how the distribution of the public income degenerated into a scramble, and how, very often, that province which was aggressive and loud in its protestation got what it wanted and not the one which was more needy but less vocal. Local economy brought no local advantage, as all surplus accumulated with the Government of India. Therefore the incentive to avoid waste was absent. Local growth of income and larger realization of money from local taxation could not serve as a means to improve local conditions, as all money collected, from whatever source and place, was directed to the treasury of the Government of India. In the absence of any stimulus to the development of local revenue, the general interest in the improvement of the public income was reduced to the lowest level.

After the completion of the conquest of India and with the end of the Mutiny, the military bias of the administration gradually disappeared. The financial responsibilities assumed by the Government of India were extremely

difficult to discharge. The unwieldy centralized system did not confer the benefit either of greater economy or of greater efficiency. It only caused embarrassment to the Government of India and created just grievances among the provinces 'The Provincial Governments were allowed no discretion in sanctioning fresh charges. If it became necessary to spend £20 on a road between two local markets, to rebuild a stable that had tumbled down or entertain a menial servant on 10s a month the matter had to be formally reported for the orders of the Government of India.'

Lord Mayo's Government made the first attempt at decentralization. Large financial power and responsibility were delegated to the Provincial Governments. Certain departments like police, jails, education, medical services, hospitals, sanitation, registration, printing, roads and communications, civil buildings, were given for management to the provinces on certain conditions. Departmental receipts from these heads were allowed to the provinces, and in addition a fixed grant of money totalling altogether Rs 4,68,87,110 was annually assigned to them. With this income they were to cover the expenses of management. Discretion was left to the provinces to obtain a larger revenue by additional taxation and better management. Income from the remaining sources and the administration of the remaining departments was retained for the Government of India.

It must be clearly understood that this process of decentralization was not based on any principle of federal finance. It was not intended to invest the provinces with any degree of financial independence. The scheme of provincial devolution as initiated in 1870 was inspired only by considerations of administrative convenience and facility. The Central Government were not voluntarily abdicating any of their functions but simply transferring them to subordinate agents in the interest of division of labour, which led to administrative efficiency. Even in those subjects, therefore, which were 'provincialized', the Governor-General's superior control and supervision were expressly maintained. However, in spite of its various defects and shortcomings, the scheme, on the whole, realized the aim of its author. It helped to bring about greater harmony between the Central and Provincial Governments. It allowed greater freedom and scope to the provinces and encouraged them to undertake works of provincial utility and benefit.

The next step in the direction of devolution was taken in 1877 in the time of Lord Lytton. To the departments which were given over to provincial management in 1870, several new ones were now added. These included excise, stamps, law and justice, and some other items varying from province to province. Instead of making any corresponding addition to the earlier fixed grant for meeting the expenditure,

revenues from these departments were allowed to be kept by the provinces. Any surplus above the estimated income was shared to the extent of half with the Government of India, the latter also undertook to meet deficits to the same extent if and when they occurred. This did not amount to conferring powers of fresh taxation upon the provinces but was intended to improve the quality and the economy of the administration. Contracts on this basis were made with each province separately, and they were to have a duration of five years.

Assam and Burma were backward provinces and were treated differently. Instead of a fixed allotment, Assam was given a share of the land revenue of the province. Burma was similarly given a share of the land revenue and also of the income from forests, the export duty on rice and the salt tax. The new principle in the settlement of these two contracts was that, instead of making a fixed assignment of money to make good the excess of provincial expenditure over provincial income, a share in the imperial revenues was granted. The principle adopted here was later on extended to other provinces. Sir J. Strachy and Lord Lytton were the sponsors of this change.

Lord Ripon and Major Baring introduced further improvements. Arrangements with the different provinces needed co-ordination. The experience of the new arrangement soon began to indicate that, financially, it had not proved as successful as it was expected to. When the time came therefore for renewing the settlements of 1877 some important modifications were introduced. The original lump grants made since the time of Lord Mayo were abolished. Instead, all revenues from certain specified heads, like civil departmental receipts or civil buildings, were made over entirely to the provinces. Of the remaining heads, which had been already transferred to the provinces, forests and registration were divided almost equally between the two contracting parties and the deficit that was still left in the provincial budgets was not made good by the grant of lump sums but by a fixed share of the land revenue.

The division of Government departments into three groups dates from this time. Heads like defence, foreign relations, customs, currency, etc., were purely imperial, heads like land revenue, registration and forests were divided, and some minor heads like civil buildings and civil departmental receipts were purely provincial. The Provincial Governments were relieved of any burden resulting from the occurrence of calamities like war and famine, unless the calamities were of an exceptionally severe character. The contracts of 1882 were quinquennial.

From 1884 a necessary minimum balance had to be maintained by the Provincial Governments with the Government

of India. The latter often usurped the balances accumulated with 1897 great difficulty by the provinces, and this caused considerable embitterment and ill-feeling. However, settlements were renewed at the end of each five years without any great change of principle. The position in 1897 was as follows. Generally speaking the Provincial Government retained the whole of the receipts from the provincial rates, courts of law, jails, police, education, medical and local marine services, minor irrigation works, certain State railways and major irrigation works, buildings and roads, stationery, etc. Stamps, assessed taxes, forests and registration receipts were divided half and half, of excise and land revenue three quarters were taken by the Government of India and one quarter was allowed to the provinces. On the expenditure side, the provinces had to incur expenditure on most of these heads and generally had to pay a share in the cost of collecting. The share was proportional to their receipts from the various departments.

The settlements being quinquennial, the dread of a revision 1904 at the end of the fifth year was a standing cause of restlessness. It marred the continuity of provincial administration. Any contemplation of great projects of development was utterly impossible. After the cessation of their exchange trouble, the Government of India were persuaded to reconsider the question. Lord Curzon's Government therefore in 1904 tried to remove the defects of the existing system. The old division into imperial, divided, and provincial heads was of course continued, but the respective shares of the two powers were revised. Expenditure on purely imperial heads was to be incurred as before entirely by the Government of India. Expenditure incurred on the divided heads was to be divided between the provincial and central administration. The settlements were declared to be quasi-permanent and were to be revised only in grossly unjust or extremely difficult circumstances. The old uncertainty, the danger of appropriation of the provincial resources by the Government of India and consequent absence of any incentive to economy now disappeared. A greater certainty and freedom were allowed to the provinces in financial matters.

Lord Hardinge's Government took the final step in the 1912 development of the system. The quasi-permanent settlements were declared to be permanent in 1912. It was laid down that the Provincial Governments were not to budget for a deficit except under abnormal conditions. The Government of India curtailed their intervention in the making of provincial budgets. The unseemly quinquennial conflicts, which punctuated the relations of the Government of India with the provincial administrations up to 1904 and which had practically ceased after the introduction of the semi-permanent settlements of that year, were now given a decent burial.

The position, therefore, before the Montford Reforms can be summed up thus. Subjects of all-India importance requiring a uniformity of policy and administration like defence, foreign relations, customs, posts and telegraphs, mint, famine relief, railways and irrigation were declared to be wholly central subjects, income from them, expenditure on them, and executive control over them vested exclusively in the Government of India.

The second group of subjects, known as Provincial heads, consisted of a few departments, the revenue from which and expenditure on which were wholly the concern of the province. All civil departmental receipts and those from public works departments came under this category. The administration of the other departments in this group, which included jails and police, education, medical, printing, roads and civil buildings, was primarily vested in the provinces, the Government of India interfered to enunciate important principles of policy, or to revise and check actions of the provincial executive if they were wrong or mischievous.

The last group consisted of what are known as the Divided heads. In it were included subjects like land revenue, stamps, excise, income-tax, forests, registration, irrigation, etc. Revenues from these sources were divided in a certain ratio between the Central and Provincial Governments, the ratio of the share of one to the share of the other being fixed after a comprehensive deliberation. The expenditure in these departments was also shared, and so was administrative control over them. The provinces took the initiative in local management and the Government of India retained their general supervision and guiding control. As the Government of India had a share in the revenue, they had a strong motive for interfering even in the details of the administration. They exercised a close supervision over land revenue settlements and over works in which expansion and development depended upon capital outlay.

It is thus easily intelligible, how, apart from the administrative control directly enjoyed as such by the Government of India over the Provincial Governments' actions, a good deal of indirect but very real administrative control followed as an inevitable corollary of the then existing financial organization.

The Government of India retained complete control of all taxation imposed in British India. It was thought politically inexpedient to allow any large freedom to the provinces in this matter as long as the provincial administrations were irresponsible bureaucracies. Superior control from above was the only safeguard against unjustifiable or mistaken actions of these officials. Hence it was expressly laid down that no province could, without previous sanction of

the Governor-General, consider any Bill or measure affecting the Government of India's revenues. Even in those resources which an ingenious Provincial Government might seek as not coming within the bounds of this inhibiting clause, the Central Government could exercise its controlling power by what were known as 'instructions' to provincial administrations. They required all projects of law to be approved of by the Secretary of State. A proposal for provincial taxation would have, therefore, to be referred for sanction to the Government of India, the Finance Department of which would analyse it carefully. Even the budgets of Provincial Governments, before their submission to provincial legislatures, had to be submitted in their draft form to the Central Government, which could introduce any alterations or additions in them. The subordination in which the Provincial Governments were held was thus close and the scope of their action was much limited.

The provinces were never allowed to borrow on their own credit in an open money market. They could not pledge their solvency in order to find effective means of self-expansion and improvement. It was thought unwise to concede this power in any measure to any authority other than that of the Central Government. The market for loans was believed to be limited and sensitive, and it was feared that credit was likely to be impaired by indiscreet ventures. The Decentralization Commission considered this question and declined to relax the rigidity of this rule.

Lastly, through the instrumentality of various codes and instructions, such as the Civil Service Regulations, Civil Accounts Codes, Public Works Codes and the like, the Central Government's control over the provinces was immensely strengthened in practice. These codes imposed definite restraints upon the powers of provincial administrations to create new appointments or increase the emoluments of the existing ones. Competitive and ruinous generosity between the provinces had to be stopped. A mass of regulations affecting recruitment, promotion, leave, foreign service, and so on had arisen out of this necessity. The control over provincial expenditure from above exercised with such strictness and rigidity was intended to make good the lack of effective popular criticism. In the absence of powerful local legislatures, the necessity and the value of such control were regarded as above dispute.

It must be emphasized that the process of decentralization initiated by Lord Mayo and developed thereafter by his successors was purely a matter of internal arrangement between the Government of India and the Provincial Governments. It did not require the sanction of Parliament and was not enacted by parliamentary legislation. The

scheme did not owe its origin to the ideals of federalism; it was inspired and permitted only by considerations of administrative convenience and efficiency. The Central Government did not abandon any of their financial or political powers, but merely transferred them to subordinate agents in the interests of division of labour. Their ultimate superiority, however, remained unaffected and unquestioned.

§3 CENTRAL CONTROL OVER PROVINCIAL LEGISLATION

The power of making regulations was extended to the **Provincial legislatures not independent** Presidencies by the Charter Act of 1807. However, with the gradual tightening up of the control of the central authority, the importance of this power was gradually diminished. In 1833 all legislative power belonging to the Presidencies was taken away, and the Governor-General-in-Council's laws were made binding upon the whole of the land, including the provinces. This gave an extensive jurisdiction to the central law-making authority. The right of independent legislation was restored to the provinces in 1861, but the Government of India's legislative authority continued concurrently to extend to the whole of India as before. In local matters indeed, freedom began to be allowed to the provinces to pass their own legislation. Yet in the theory of the constitution, till the Reforms of 1919, the Legislative Councils were only enlargements of the executive government for purposes of law-making. Legislative power residing in them as distinct from the executive Provincial Governments was not recognized. The provincial legislatures, therefore, did not possess any genuine independence.

Subject to certain restrictions, local legislatures in the **Delegation of powers to the provinces** provinces were allowed to make laws for the peace and good government of the provinces. The central legislature could not efficiently cater for the needs of distant provinces. Therefore it delegated its function, subject to its superior control, to provincial legislatures. All-India subjects like customs, public debt, currency, coinage, posts and telegraphs, defence, central taxes were of course excluded from the provincial sphere. Local Councils were also not allowed to amend any Act of Parliament or to repeal or alter without previous sanction any Act of the Governor-General's Legislative Council. Previous sanction of the Governor-General was necessary to consider any law affecting religious usages of any class of British subjects in India or the regulation of patents and copyrights or the relations of the Government with Princes of Indian States. These restrictions would not appear to be stringent. Yet in practice they limited the freedom and discretion of Provincial Governments to a great extent.

As the Montford Report has pointed out, most of the provincial legislatures were very young institutions and a great part of the field which would have been otherwise covered by them had been already filled by the Governor-General's Legislative Council, which of course was the elder body and always possessed concurrent legislative power for the whole of India. Comparatively fewer things were therefore left to the discretion and disposal of the newer bodies. Besides, the necessity and the desirability of having a uniform policy in important matters induced the central legislature to take comprehensive action in them for the country as a whole. For instance, the Penal and Procedure Codes and the Evidence Act, laws for prisons; laws about marriage, minors, succession; civil laws regulating contracts, trusts, transfer of property, easements, arbitration, etc., business laws for patents, trade marks, weights and measures, insurance, insolvency; laws for forests, mines, factories, wireless, electricity, labour laws about breach of contract, emigration, apprentices, etc., legislation about public health, poisons, leprosy, lunacy, epidemics; laws about religious endowments, charitable societies, plays, cinematographs, motor vehicles, ancient monuments and treasure troves—on all this miscellaneous mass, legislation was passed by the Government of India. Laws were also passed by them on subjects essentially their own, like military and marine, foreign relations, currency and finance, customs, tariffs, etc.

Legislation on the subjects in the miscellaneous list given above could have been undertaken by the provinces. There are precedents in western countries to show that legislation in these subjects may not necessarily have the uniformity that accompanies centralized control. Still, it was considered that on the whole such uniformity would conduce to greater national benefit. The Government of India therefore undertook legislation themselves and laid down the principles of policy and administration in all of them. This directly reduced the scope of action and legislation of the Provincial Governments.

Over and above these circumstances, the cumulative effect of which was greater control exercised by the Central over Provincial Governments in matters of legislation, there was another factor of considerable importance and effect. The previous sanction of the Government of India and the Secretary of State was declared necessary for all projects of provincial legislation before their introduction. Even private Bills could be brought under the operation of this executive control by the fact that leave for introducing the Bill had to be given by the Council. As in many of the Councils the Provincial Governments could, if they chose, successfully,

**Previous
sanction of
the Secretary
of State and
Governor-
General**

oppose the granting of such permission, the Government of India, by executive direction, could compel the Provincial Government to oppose such a measure. Moreover, in the case of all private Bills which affected revenues, the sanction of the Government of India to their introduction was necessary. The assent of the Governor-General to all provincial legislation after it had been passed by the Provincial Legislatures was also necessary. The necessity of the previous sanction of the Government of India to the very introduction of legislative projects effectively curtailed provincial initiative and scope of independent action. The Decentralization Commission came to the conclusion that a substantial measure of legislative devolution was necessary in the interest of the administration of subjects of local importance.

§4 CENTRAL CONTROL OVER PROVINCIAL ADMINISTRATION

It is not necessary to repeat that the responsibility for the administration of the whole of British India was enunciated first by the Regulating Act and then, more comprehensively and emphatically, by the Act of 1833. The idea of centralization was new, and Warren Hastings found great difficulty in exacting obedience from the Governors of Madras and Bombay to the orders of the Governor-General. For some time after the Regulating Act, the control of the central authority over the provinces was more or less nominal. The aggressive and unwise policy of the Bombay and Madras Governments involved the Governor-General in political and financial difficulties. The geographical isolation of the provinces, which were separated from the seat of the central authority by a wedge of independent territory, helped in the attenuation of the power of the Central Government over them. It was only when the task of conquest was completed and contiguous boundaries connected the central authority's dominion with that of the provinces that the latter came under effective central control. Lord Wellesley declared that 'all measures relating to the general defence and protection of India, to the levying of war or making of peace, to the general administration of revenue of all Presidencies, and, finally, to every point affecting the general interests, whether civil, military or political, of the Company's possessions, form the exclusive duties arising out of the superintending powers of the Governor-General-in-Council'.

After 1833, centralization became complete. It was of course indispensable that for conducting the daily routine of administration in such a vast country, the Central Government should place certain powers in the hands of the local Governments, and to allow them to function in their own way. No single administration could support the Atlantean load—to

use the graphic expression of the Montagu-Chelmsford Report—of the government of a huge and newly-conquered dominion. But it was clearly laid down that the Governor-General should keep himself fully informed about the doings of the subordinate Governments and correct them if necessary. As early as 1884 the Court of Directors wrote to Lord William Bentinck, 'with respect to that portion of government which you fully confide to the local authorities, it will be your duty always to have before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it'. All the newly acquired provinces were supposed to come under the direct authority of the Governor-General-in-Council, and he exercised it by delegating the necessary functions to subordinate officials like Lieutenant-Governors and Chief Commissioners.

In the administration of subjects which were of all-India importance, and control over which was kept **Supervising powers** entirely in the hands of the Central Government—defence, the States, currency and coinage, tariff and customs, post and telegraph, railways, etc.—there was no question of the provinces coming into the administrative picture at all. But even in respect of those subjects in which authority was delegated to and shared with the provinces, and in which primarily the local Governments were intended to bear the burden of administration, the Government of India kept on actively functioning. They did not, indeed, act directly or adopt measures on their own initiative. But their power was effectively wielded as a supervising and appellate authority. Their departments exercised constant control over the day-to-day operations of similar departments functioning in the provincial areas.

For example the Home Department of the Government of India supervised the administration in the provinces in subjects of law and justice, police, jails, internal politics, medical services, the Indian Civil Service in the provinces, etc. The Revenue Member supervised similar administration in the subjects of land revenue, surveys, forests, agriculture, etc., and the Finance Member that in opium, stamps, income-tax, etc. The Education Member supervised education, local self-government, sanitation, etc. In all these departments the primary jurisdiction belonged to the Provincial Government, but the Government of India could interfere, either on their own initiative or in their appellate capacity. The degree of this interference and control would obviously vary with the circumstances of each case.

In many respects India is one single undivided country and in these respects a uniformity of administration was extremely desirable. In questions like the development of trade, industry

and science, the tendency was towards the formulation of a uniform policy, even a uniform administration. In cases like these the tendency to concentration was inevitable. It helped to combat any unhealthy divergence in the conditions of the various provinces. It avoided dissipation of energy and money in dispersed efforts that could not in fact succeed alone. It must also be remembered that the main Services which carried out the mandate of the Provincial Governments were recruited by the Secretary of State, and their terms of service were fixed by him. So that on many questions concerning them the Provincial Governments could not interfere at all.

There was one more force which indirectly helped the process of centralization. The Government of India thought it necessary to exercise control over the provinces from above, to give them the benefit that comes from detached judgement of a problem of administration. The authority on the spot, with its excessive attention to detail and its saturation in the colour of its immediate surroundings, may not always be able to form a proper judgement and take a bold stand. The Government of India, standing apart from and above mere details, could make a comprehensive survey of the whole problem and enunciate and enforce fresh principles. Their superior authority was believed to prove a beneficial corrective to the narrow-visioned concentration on detail which the Montagu-Chelmsford Report pointed out as being the penalty of absorption in the task of day-to-day administration.

The responsibility of the Secretary of State to Parliament and the consciousness that to that body they were accountable for the peace and good government of the whole land, impelled the Government of India to exercise close supervisory control over the provinces and to maintain a high standard of public and personal morals. In the absence of popular control, their control from above had a salutary restraining effect.

The Montagu-Chelmsford Report has pointed out that the administrative control exercised by the Government of India over the provinces was too general and extensive to admit of any analysis. They 'have regarded themselves in the past as distinctly charged with the duty of framing policy and inspiring reforms for the whole country'. Their legal supremacy in all matters connected with provincial administration was clearly defined in a section of the Act of 1915 which the Simon Commission has quoted: 'Every local government shall obey the orders of the Governor-General-in-Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to

the government of its province.' It is no wonder that with such wholesale and absolute powers conferred upon the Central Government, the Indian constitutional framework became entirely unitary in character

XX. THE UNITARY GOVERNMENT: AFTER THE MONTAGU-CHELMSFORD REFORMS

§1 SEPARATION OF CENTRAL AND PROVINCIAL SPHERES

THE authors of the Montagu-Chelmsford Report regarded the provinces as the proper domain for constitutional experiments. The first steps in the introduction of responsibility were to be taken in them, and a new standpoint altogether was now introduced in the consideration of the question. Mr Montagu visualized the provinces as autonomous self-governing principalities, united by and under a strong Central Government. Responsibility in the provincial administration was incompatible with bureaucratic control from above. The largest possible measure of independence in legislation, administration and finance had to be conceded to the provinces in the inevitable logic of this new angle of vision. This independence and freedom is connoted in the now familiar expression 'provincial autonomy'. Indeed there was no idea of creating a federation, it was expressly disavowed. However, a large measure of liberty was now to be extended to the provinces, not only for the administrative convenience of the Government of India, but in response to the urgent call for such a liberty in the interests of an all-sided provincial development and the growth of self-governing institutions.

Endeavours were therefore made, by framing Devolution Rules, to demarcate the legislative sphere of the Government of India from that of the provinces. As far as possible, each was to be made independent of the other. Their respective spheres of action were to be clearly distinguished. The old group of divided heads, which had interlocked their mutual interests, their dual control, and their joint responsibility, and had engendered a good deal of bitterness and ill-feeling, were now to be abolished. In short, the two jurisdictions were to be maintained as distinct as possible. The central and provincial budgets were to be separated, the former recording only direct transactions of the Government of India. The new viewpoint inclined in the direction of the utmost relaxation of the control of the Government of India over the provinces in all provincial matters and in the acknowledgement of the provinces as the only proper centres for effective popular development.

With the idea of giving effect to this new principle, inquiries were instituted to explore methods for the bifurcation of central and provincial functions. As a result of the inquiry and on a discussion of the general bearings of the question, it was found possible to prepare

**The central
and provincial
lists**

two separate lists of administrative subjects, and to hand over one to the Central and one to the Provincial Governments. As far as possible, the lists were to be mutually exclusive. There was to be the least possibility for the two authorities to come into conflict on common ground. The principle of division was of course the most obvious one, namely the necessity of unity of control and uniformity of policy in central subjects on the one hand, and the desirability of provincial and local freedom on the other hand.

Questions of all-India importance, like defence and foreign relations of India, or those like customs, posts, telegraphs and currency, in which a uniformity of principle and a sameness of administrative system are of paramount importance, would naturally lie within the Central Government's sphere. On the other hand, in questions like education and local self-government, or agriculture, diversity of management might be allowed—nay, might be necessary—on account of the great diversity in local conditions. Such departments might best be left to be entirely administered by local administrations. After the Government of India Act of 1919, the old divided heads were abolished.

Thus only two distinct lists now remained, the central and provincial. The central subjects comprised, among **Chief heads in the two lists** others, the following departments: defence; external relations, relations with Indian States, railways, shipping and navigation, posts and telegraphs; customs, cotton excise duty, salt tax, income-tax, currency and coinage, public debt of India, opium, copyright, emigration and immigration, archæology, ecclesiastical, the Public Services Commission, census and statistics, etc. The important subjects in the provincial list were education, local self-government, medical administration, public health and sanitation, irrigation, land revenue, famine relief, agriculture, co-operation, forests, excise, industries, police and justice, weights and measures, etc.

The compilation of these separate lists was followed by consideration of the possibility of relaxation of administrative, legislative and financial control over the provinces. On each of these points definite recommendations were made and were accepted as matters of constitutional practice, if not as the letter of the law.

§2 RELAXATION OF FINANCIAL CONTROL

Great improvements were made in the financial powers of **New sources of income** the Provincial Governments under the new scheme. In the first place, the central and provincial budgets were entirely separated and the former embraced only the direct transactions of the Government of India. Definite sources of income were allocated to the provincial administrations. Receipts from provincial subjects, a list of

which has been already given, a share in the growth of the revenue from income-tax collected in the provinces, proceeds of new taxation which the Provincial Governments might impose or of the loans which they might float, balances standing to the credit of the provinces at the time when the Government of India Act came into force, were some of these allocated sources

The power of borrowing, which had never been enjoyed by the provinces before, was now conferred upon them. Loans might be incurred to meet capital expenditure on any work of a material character, or a project of lasting public utility, if such an expenditure could not be met out of current revenues. They might be incurred for irrigation purposes or for maintaining famine relief works or for the repayment or consolidation of earlier loans. It was laid down that the previous sanction of the Governor-General-in-Council for all loans floated in India, and of the Secretary of State for all loans floated in England, was necessary. These authorities might fix the amount of the loan and the conditions on which it was borrowed.

The power of taxation, which in pre-Reforms days, was exclusively possessed by the Government of India, was now delegated to the provinces. They could now impose taxation without the previous sanction of the Governor-General under the following heads: a tax on land put to uses other than agricultural, a tax on succession; a tax on gambling, a tax on advertisements, a tax on amusements; a tax on any specified luxury, a registration fee, and a stamp duty. The Presidency of Bombay exercised this power and introduced the entertainments tax and enhanced the Court fees.

However, certain restrictions and limitations still continued to be exercised over provincial expenditure. The most important of these was the newly created obligation of what are known as provincial contributions. In the new dispensation of decentralized finance and of a complete separation of imperial from provincial heads, it was found that the Central Government could not be self-sufficient. The resources handed over to it as its own did not suffice for its expenditure. The only suitable and simple remedy to make up its deficit was to ask the provinces to make compulsory annual payments, which would be put as a first charge upon their revenues. The total amount of such a deficit was estimated to be ten crores. This sum was distributed among the provinces according to their capacity as judged from various standpoints. It was an extremely difficult and intricate task and a special committee under the presidency of Lord Meston made definite recommendations about the distribution. They recommended two schedules. One provided for a transitional period of seven years and suggested definite sums to be collected from every

province in each of the seven years. This period was regarded as necessary for equalizing provincial conditions and correcting diversity. The second schedule gave the permanent and standard ratio at which each province should be taxed in order to wipe out the central deficit. The details are given below

PER CENT CONTRIBUTIONS TO DEFICIT IN SEVEN CONSECUTIVE YEARS BEGINNING WITH THE FIRST YEAR OF CONTRIBUTION
(ROUNDED OFF TO EVEN HALVS)

Province	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year
Madras	35½	32½	29½	26½	23	20	17
Bombay	5½	7	8	9½	10½	12	13
Bengal	6½	8½	10½	12½	15	17	19
United Provinces	2½	2½	2½	2½	20	19	18
Punjab	18	16½	15	13½	12	10½	9
Burma	6½	6½	6½	6½	6½	6½	6½
Bihar and Orissa	nil	1½	3	5	7	8½	10
Central Provinces	2	2½	3	3½	4	4½	5
Assam	1½	1½	2	2	2	2	2½
Total	100%	100%	100%	100%	100%	100%	100%

In the financial year 1921-2 contributions were to be paid to the Governor-General-in-Council by the local Governments mentioned below according to the following scale

Name of province	Contribution (in lakhs of rupees)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	61
Central Provinces and Berar	22
Assam	15

Every province complained against inequity of the Meston Award, and officials and non-officials condemned with equal severity the unwisdom of the contributions. The Reforms Inquiry Committee also wrote against the arrangements. A revision of the Meston Settlement, if not its complete abolition, was unanimously and persistently demanded by both official and non-official opinion in the provinces of India. Ultimately, Sir Basil Blackett, Finance Member, announced in his budget speech for 1928-9 'the complete and final remission of provincial contributions'. To the extent of this remission a larger margin was left to the provinces out

of which expenditure on nation-building departments could be incurred.

The great defect of the distribution of departments between the Central and Provincial Governments introduced by the Montford Reforms was that it allotted to the centre all the elastic and expanding sources of income and left to the provinces items of taxation which were both inelastic and unpopular. The exchequer of industrially and commercially advanced provinces could not benefit by the growth of their income because income-tax and customs were central subjects. On the other hand, the Indian public had long been demanding a reduction in land revenue, and the adoption of a policy of total prohibition which would result in an extinction of the excise revenue. And these very sources of income were made available to popular Ministers for carrying out their programmes of nation-building activity.

But it must be said to the credit of the Montford plan that it constituted a definite advance, in practice if not in law, towards a federal system. It endowed the provinces with a distinct if not inviolable personality, and gave them considerable independence in financial matters. The Act of 1919 did not indeed itself prescribe the allocation of central and provincial subjects, but left it to be done by Rules made under the Act. But, as the Joint Parliamentary Committee which considered the White Paper of 1933 has stated, though the separation of revenues then effected was, in legal form, merely an act of statutory devolution which could be varied by the Government of India and Parliament at any time, nevertheless, from the practical point of view, a federal system of finance can be said to have come into existence after the Montford Reforms. It has been further modified and legally incorporated as an integral part of the constitutional structure created by the Act of 1935.

§3 RELAXATION OF LEGISLATIVE CONTROL

Steps were taken also in the direction of legislative devolution. As has been already noted, the liberty of legislation that was granted to the provinces in earlier years could not be utilized to the fullest extent because the field which would have legitimately fallen to Provincial Governments had been already covered by imperial legislation. After the Montford Reforms, it was enunciated that the previous sanction of the Governor-General was not necessary for legislation in purely provincial subjects. However, (i) for all legislation which aimed at repealing or modifying laws passed before 1861, unless otherwise declared by the Governor-General-in-Council, (ii) for all legislation which was likely to affect central subjects or foreign relations or the discipline of His Majesty's

military, naval or air forces, and (iii) for all legislation upon provincial subjects which were in whole or part subject to Indian legislation, the previous sanction of the Governor-General-in-Council was made obligatory. Besides, copies of all Acts which received the Governors' assent had to be sent to the Governor-General for his assent, and until that was given, an Act did not get legal validity. An Act of the provincial legislature assented to both by the Governor and the Governor-General could be reserved for the assent of His Majesty-in-Council. In such cases the Act did not have validity until His Majesty's assent had been notified by the Governor-General.

The minority report of the Reforms Inquiry Committee suggested measures for the enlargement of legislative devolution. The power of veto which rested with the Governor-General was justified as constitutionally indispensable. It exists in all responsible systems of Government and is very sparingly used. The obligation of previous sanction was, however, another matter. The area of the application of this restricting clause should be as much circumscribed as possible. Liberty ought to be allowed to the provinces to legislate without interference on all matters which are strictly provincial but on which laws have been already passed by the central legislature. The minority recommended that the spheres of action in regard to legislation of the Central and Provincial Governments should be clearly defined as is done in Canada or Australia. Following further the Canadian model, the residuary power should be left with the central legislature. The majority report of the Reforms Inquiry Committee also recommended that the existing stringency of control of the Central Government over provincial legislation, arising out of the provision for previous sanction, be modified by changing the rules.

§3 RELAXATION OF ADMINISTRATIVE CONTROL

The Simon Commission has described how certain provincial matters were made subject to central legislation and how they covered a wide category of provincial activities. The borrowing and taxing powers of local self-governing bodies, factories, labour questions, infectious diseases of men, cattle and plants, standards of weights and measures, were subjects which were dealt with more by the central than by the provincial legislatures. A new Indian Factories Act, a Trade Union Act and a Workmen's Compensation Act were passed by the central legislature for the whole country, while their administration and enforcement were wholly provincial. This device has enabled the Central Government to secure co-ordinating power in legislative matters, and they further strengthened it by tours, conferences and exchange of communications.

Regarding the relaxation of administrative control, it was pointed out that, after the introduction of partial responsibility in provincial administrations, they would be naturally divided into two parts, one bureaucratic and the other popular. In the former part, they would function as agents of the superior central administration. In the latter part they would have to be amenable to the Legislature's will.

It was laid down that in this popular side of provincial administration, that is in those subjects which **In Transferred Subjects** were transferred to the popularly elected ministers, the Central Government should not ordinarily interfere. Even on occasions when it was felt that the steps contemplated by the ministers were likely to prove injudicious and harmful, the Central Government was enjoined to try persuasion only and to allow the liberty of committing mistakes as the best method of learning wisdom. In all such matters, therefore, interference from above was strictly limited to those extreme and extraordinary circumstances in which the interests of the whole of India were jeopardized or conflicts arose between province and province. The Government of India had not abdicated their responsibility for the peace, order and good government of the land. There was therefore no legal restraint upon their powers of interference even in the self-governing half of the provincial administrations. These powers were mostly used to bring about a co-ordination between the policies and activities of different provinces, for pooling their experience or initiating a joint policy. Conferences of Ministers and the establishment of bodies like the Imperial Council of Agricultural Research are instances in point.

A slightly varying convention was recommended for the **In Reserved Subjects** bureaucratic half of the Provincial Governments, doing the agency work for the Government of India. The departments represented by this portion were known as Reserved. Here no transference of control and management from an irresponsible executive to a body of responsible ministers had taken place. It was therefore thought consistent with constitutional theory that the only safeguard against the vagaries of an irremovable executive would be its subordination to a superior power. This latter was represented by the Government of India and therefore they retained in the reserved half a greater power of interference than in the transferred half. The Simon Commission has stated that the control of the Centre over the official part of a Provincial Government was exercised most fully and constantly in the sphere of Law and Order. This was done through the Central Home Department, which was charged with general responsibility for internal affairs.

All the same, the fact that provincial legislatures were greatly enlarged, the fact that franchise for them was kept fairly low,

the fact that these very legislatures had been thought fit to enjoy the rights and privileges of political responsibility, had all tended to give them a unique importance. **When the legislature and executive agree** As the ultimate aim of British policy was avowedly the full development of responsible institutions, it was recommended that the interference of the Government of India even in the Reserved half of provincial administration should be restricted only to cases of unimpeachable necessity. Particularly when the Executive and the Legislature in a province were unanimous in their opinion on a certain problem, the Central Government's veto should not be ordinarily exercised at all. Thus a larger measure of liberty was allowed to the provinces, if not by an alteration of the letter of the law, by the institution of sound constitutional conventions.

After the Montford Reforms, therefore, the relations of the Central to the Provincial Governments were considerably altered. **The beginning of provincial autonomy** The grant of greater autonomy to the provinces necessarily meant a diminished control from the top. A clear demarcation of the spheres of their activity and a definite allocation of legislative, administrative and financial responsibility to the provinces were deliberate steps in the direction of their emancipation from unnecessary and inconvenient restraints imposed upon them by the central authority. Numbers of such restrictions continued, indeed, to exist even after the Reforms. Attempts were made and agitation was carried on to remove them. The importance of the Act of 1919, however, consisted in the definite acceptance of the principle of provincial freedom and independence in order to secure a proper and all-sided development in an extensive and diversified country like India.

XXI REASONS FOR MAKING INDIA A FEDERAL STATE

Federal principle generally accepted THERE seems to be a general consensus of opinion both among Indian and British politicians that the proper form of government for a country like India is a federation. It is true that the particular federal scheme which has been formulated by the Act of 1935 has evoked fierce attacks and criticism from almost all political parties in India and has been rejected by them. Yet even leaders of the Indian National Congress have made it clear that their opposition is not directed to the federal principle as such. Some of them have advocated its positive adoption. It is therefore necessary to refer to the special circumstances which make it inevitable, in the view of many responsible persons, that a new type of constitutional framework should be created for India.

§1 THE SIZE AND VARIETY OF THE COUNTRY

Immense area of the country The first consideration is the immense territorial extent of the country. India has been described as a sub-continent, and its area is practically equal to the whole of Europe without Russia. The government of such a vast geographical expanse by a single unified authority would present many difficulties, even if it is assumed that its inhabitants are thoroughly homogeneous in point of race, language and religion. A highly centralized government operating for such an extensive region might prove to be at once inadequate and excessive from the point of view of the needs of its provinces. Distance would make it difficult to establish continuous personal contact between the rulers and the ruled. In short, the task of administration might prove to be too unwieldy for the machine set up to carry it through.

Its diverse population and other conditions India is not only a country of continental dimensions but is also extremely varied in the composition of its population. Its huge area presents striking variations of cultural and economic development. It abounds in numerous races, speaking different languages and professing different religions. There are Hindus, Muslims, Parsees, Christians, etc., and also the Bengalis, Hindus, Punjabis, Gujeratis, Marathas, Canarese, Telugus, Tamils, etc., the religious and provincial divisions not being mutually exclusive. Each one of these units has a distinctive group consciousness, distinctive traditions and ambitions. The Indian people as a whole do not possess that inner affinity and coherence which are contributed by a common language, a common race and a

common religion. On the other hand, many European countries are compact racial and linguistic units and some of them are also very small in size.

It must be further remembered that India is a land of great antiquity. Its history has left an impressive variety of legacies to modern times. This ancient country has witnessed the rise and fall of many empires and the changing vicissitudes of fortune of many personalities and peoples. Such an eventful existence has naturally tended to produce many permutations and combinations of political arrangement. The British conquest of India has, for instance, resulted in a new division which is represented by two bold colours on the Indian map: the red depicts what are known as the British Indian Provinces and the yellow depicts what are known as the Indian States. The respective status of these two units has to be taken into account when the future constitution of India is under consideration.

§2 THE INDIAN STATES

The ancestors of the present rulers of most of the Indian States were either independent kings or powerful and successful ministers, administrators or generals. In the political cyclone that swept over the country during the eighteenth and nineteenth centuries, many such potentates perished. Those who believed in the wisdom of bowing to the storm could survive the great upheaval, but with lessened dignity and stature. They submitted to the conqueror, and were permitted to continue a diminutive existence on condition that their loyalty was unequivocally transferred to the new masters.

There are in all about 600 such States, covering a total area of about 7,00,000 square miles and with a population of nearly 80 millions. Some are very small with an income of only a few thousand rupees a year. Others like Hyderabad, Baroda, Mysore, Kashmir, Gwalior and Travancore are as big as some of the independent countries of Europe.

The constitutional position of these States is rather peculiar. They have lost their supreme sovereignty. There is no international recognition of their independence. Their defence and external relations are entirely in the hands of the suzerain. On the other hand, in purely internal matters, the more important States are in full enjoyment of all the authority that is associated with government, while the powers enjoyed by others are more restricted. Even in this sphere, the Paramount Power can and does interfere to prevent a State from falling into administrative disorder or financial chaos, but such interference is infrequent though it is never ineffective.

The control of the Crown over the Indian States is exercised

by and through its representatives, the Viceroy and the Government of India. The latter has been entirely bureaucratic in form and concept till now. But the political advance of British India necessarily implies an important change. The purely bureaucratic system will ultimately be transformed into a government of the responsible type. Under such changed conditions, other things remaining the same, the Crown's control over the Indian States would automatically pass into the hands of the Indian legislature.

Such a transition would be natural. It does not embody any manifest impropriety or injustice. The East India Company was not a sovereign body. It signed treaties and engagements with Indian rulers, directly or by implication, on behalf of the Crown. The successors of both the contracting parties are entitled to claim all that had belonged to their predecessors. It is on the strength and in the exercise of that claim that the present rulers of Indian States are enjoying their patrimony of power, prestige and privilege.

The Government of India became successors and legal heirs to the East India Company. If they inherited all its liabilities they were also entitled to inherit all its assets. As the agents of the Crown, they have been exercising, when necessary, superior control over the Indian States. They ought to be entitled to do so in the future also, irrespective of any alteration in their own status. The Government of India continues to be the Government of India, whether it is composed of an alien bureaucracy or of a popular Indian democracy. A transition towards the latter status is in itself no justification for depriving that body of its inherited powers.

However, the rulers of the States have been looking at the problem in a different light. Their attitude betrays distrust of a Government of India which may be formed and conducted on democratic principles. They seem to be afraid of its possible encroachments on their internal autonomy, and insist on being provided with ample safeguards to remove that danger. It is their view that the special prerogatives and privileges of their order must be held to be sacrosanct and inviolable under all conditions. They must not be made even remotely liable to modification or subtraction by a popular Indian Government.

Such an opinion is based on the concept that the treaties, engagements and sanads existing between the Indian States and the Paramount Power have a wide significance. On the one hand, they enunciate the unconditional loyalty and subordination of the States to the British Crown. On the other hand, they also convey the solemn assurance given by the British Crown that as long as the

States continue to be loyal to the overlord, their rights and internal sovereignty will be respected and preserved intact. The political advance of India as a whole or of British India only must not diminish the strength of that vital guarantee

The rulers of Indian States are therefore opposed to joining the Indian Federation unless they feel confident that their present independence will be maintained in all its fulness in the federal arrangement. They are averse to participating or acquiescing in India's political freedom except on those terms. It must be remembered that most of the Indian States are, in their internal affairs, undiluted autocracies. They are under the personal government of rulers whose authority is not hampered by any effective constitutional restraint. The subjects of States have no decisive voice in their administration. They cannot vote taxes or regulate expenditure or control the executive and the legislative machine

This gives rise to a situation which is both anomalous and perplexing. The absolute rulers of the States seem to prefer the superior control of a foreign bureaucracy to the domination of an Indian democracy. An assurance of their internal sovereignty by the British Crown and Parliament may produce a strange result. It may serve as a bulwark against any agitation for popular rights and liberties inside the States. It may help, ironically enough, in strengthening and perpetuating a form of government which is essentially feudal in its concept and undemocratic in its structure, and which is being deliberately banished from British India

§3 THE BRITISH INDIAN PROVINCES

The British Indian Provinces represent that part of the Indian dominion which was not only conquered but annexed by the British power. It was placed under the direct rule of British officers. The Regulating Act, and more particularly the Acts of 1833 and 1858, established in British India a highly centralized unitary government. All civil and military authority was concentrated in its hands. Provinces had indeed to be formed and Governments established in them. But all of them derived their power from the Central Government and only performed such functions as were delegated to them by that authority

Decentralization was begun by Lord Mayo in 1870 and it reached a fairly high stage in the separation of central and provincial subjects in the Montford Reforms. But even that scheme did not confer a new status upon the provinces. The Government of India were neither required nor permitted to abandon any of their final responsibilities. Transfer of power by and from them was merely devolution and delegation. It did not create co-ordinate entities

but only subordinate agencies in the shape of provincial authorities.

Constitutionally, the British Indian Provinces or British India are subject to the final authority of the British Parliament which can act through its agent, the Secretary of State for India. The form of their governments, the structure of their executive, legislature and judicature, are prescribed by Parliamentary Acts. Even the daily routine of their administration was under the general control and supervision of the Secretary of State till the introduction of Provincial Autonomy in 1937. It is the British Parliament which determines the nature of the Government that shall be established to function in British India. On the other hand, the rulers of Indian States are immune from this kind of interference and control, because their relations with the sovereign power are determined by treaties, charters and sanads. Parliament cannot pass Acts bearing upon their internal affairs, nor can it dictate the framework of their administrative system.

§4 THE ESSENTIAL UNITY OF INDIA

Thus there are two constituents which make up political India today. One is the group of Indian States, the rulers of which are exercising extensive rights of internal sovereignty. They would have to sacrifice a portion of this sovereignty in order to join an All-India Federation. Secondly, there are the efficiently organized British Indian Provinces whose powers are theoretically wholly derivative, and therefore liable to be modified, reduced or withdrawn by the Central Government. They have not to part with anything for the sake of the Federation because they possess nothing. On the other hand, by being incorporated into it, they will gain an authority and a status which they have never enjoyed.

It is generally acknowledged that behind all the racial, linguistic, religious and political divergence that is presented by the Indian panorama, there is an inherent oneness, a fundamental unity. Geographically, India has been a distinctive coherent whole from historical times and that in itself is a great uniting factor. Politically, it has lived at intervals under the unifying influence of a single imperial authority. Its economic problems, particularly in modern days, have a range which extends to the whole land, and demand a solution which is conceived on a national basis. Above all, among very large portions of its population there has existed such a close affinity in intellectual and emotional outlook, in cultural development and spiritual allegiance, that they feel themselves to have been made in the same basic mould and to belong to the same family.

The Indian States cannot, therefore, be ignored in the evolution of responsible government for India. They are not a separate category of their own, they are part and parcel of the same motherland. Between them and British India there is a complete identity of interests, and also of race, language, culture and historical traditions. Their difficulties and their problems, both in times of peace and in times of war, are common. It is merely an accident, however important, that certain groups of Indians, occupying certain portions of Indian territory, live under a different constitutional arrangement. The cleavage that is thus created between people who are organically one in all respects is quite artificial and has no correspondence to the fundamental reality.

Opinion of the princes At the first Round Table Conference in London, several prominent Princes proudly declared that they were Indians first and Princes afterwards. Nor are the subjects of Indian States in any sense different from their neighbours and brethren in British India. The Indian nation, in the larger sense, must be considered to be one and indivisible, whatever may be the nature and the degree of the autonomy conferred upon its units. British India and Indian India are two parts of the same entity.

Adoption of the federal ideal Those who frame a constitution for India have to take into consideration these peculiarities. The Indian state ought to be an expression of Indian life. There must be diversity in it and also a fundamental unity. The form of the Indian government must embody and be consistent with that contradictory dualism. It should facilitate the growth of the individual component units and also of the whole nation. Many Indian and British statesmen feel that this ideal can be best achieved by a federal constitution. It can secure to the provinces all the necessary freedom to develop in their own way and to govern themselves, and also provide a strong central government to guard and advance the interests of all.

§5 OBSTACLES TO AN INDIAN FEDERATION

A great obstacle to the introduction of the federal system for the whole of India is the constitutional status of the Indian States. They cannot be compelled to part with even a fraction of their sovereignty by Parliamentary enactment. That sacrifice can only be spontaneous and voluntary. Till a few years ago, it was not expected that many Indian Princes could be persuaded to merge some aspects of their individuality in the larger Indian whole. However, there was an agreeable surprise at the first Round Table Conference in London. The Princes who were present at that

conference gave their enthusiastic support to the federal principle. They even declared their willingness to accept a constitutional scheme which is fundamentally based on that ideal. Yet the actual terms on which they would be prepared to join the Federation have been the subject of a long controversy, and no satisfactory agreement has been reached till now.

A lesser and a purely theoretical objection was envisaged by **A theoretical objection** constitutional purists. Writers on political science have described one characteristic feature of a federation. It is formed, they say, as the result of a deliberate combination of states which are sovereign. These states must choose to sacrifice their independence in the cause of a new corporate existence. It therefore seems to follow that where there are no independent sovereign states pre-existing, a federation cannot be brought into being. For instance, Mr Montagu expressed the view that the truly federal element cannot enter into Indian polity. 'There is no element of pact. The government of the country is one, the Local Governments are literally the agents of the Government of India. The last chance of making a federation of British India was in 1774 when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own and therefore nothing to surrender in the foedus.'¹

However, it is obvious that political theory, like all social theory, must take cognizance of the facts and interpret reality. A social science is the summation of human experience. Its method is mainly inductive. The formulas enunciated by such a science cannot be completely rigid, but must have the elasticity of a living organism. Its generalizations may sometimes prove to be inadequate, because a particular type of experience has been exaggerated into a universal law. Emphasis must be given not so much to the form, as to the spirit, of the regulating causes and conditions.

It may be that in the past federations have mostly been formed by independent states relinquishing a part of their sovereignty and creating out of themselves a new composite sovereign to whom they transferred their allegiance. It may also be that once a federation was started, the further tendency has inevitably been towards centralization. But conditions in India are different. With its dimensions of a subcontinent, and its population equal in number to one-sixth of the human race and extremely diverse in character, India requires a constitutional structure which can satisfy a double purpose. In the first place, democratic self-government with its effective popular control must become in practical experience a living reality. This means that the territorial area

¹ *Montford Report*, p. 78

of the governmental unit, without being unduly wide and unwieldy, should be so prescribed that a continuous and active contact can be maintained between the electors on the one hand and the legislators and ministers on the other. Secondly, sufficient elasticity must be provided for adjusting local peculiarities and local requirements. An omnipotent unitary government controlling a heterogeneous subcontinent obviously cannot be fitted for this task. Its mere existence, which is due to the accidents of history, cannot be pleaded as an argument against its radical reform. The process of constitutional progress in India therefore will have to be the reverse of what has happened in other countries. An Indian federation must evolve out of the existing unitary framework.

It does seem a little odd that the chances of establishing a federation of India should appear to have been irrevocably lost because, in the circumstances of 1774, the Parliament of Britain thought it wise to pass the Regulating Act for the better government of India! Constitution-building evidently cannot wait for such a scholastic inflexibility to relent and to leave the way open for natural adjustments and growth. Two factors are necessary to bring the federal doctrine into play and both of them are found in India. There is therefore no theoretical or practical difficulty in giving a federal shape to the Indian polity. The first of these factors is the existence of separate groups of human beings, differentiated from each other by language and race, but each distinct in itself. The second is a keen desire on the part of these groups to coalesce to a limited extent and also to retain their individuality in the amalgamated whole. The political independence of these groups may be usual but is not indispensable. It is infinitely more important that they should be well-knit racial, linguistic or cultural units, and further, that they should sincerely aspire to combine into a common nationhood.

§6 ARGUMENT AGAINST AN INDIAN FEDERATION

There is an influential school of political thought in India which is keenly opposed to the incorporation of the federal principle in India's constitutional structure. It does not welcome the abolition of the unitary system for the following reasons:

It will discourage the sense of a common nationality

First, it is contended that India has been torn by dissensions for centuries. The separatist and narrowly selfish tendency has dominated the whole course of Indian history and its results have been fatal. A century of strong, centralized government, with its uniformity of law, policy, and executive action, has fostered the concept of a common Indian nationhood. Its disappearance may encourage an ugly reversion to disinte-

grated national life and give a setback to the forces that make for a fusion of discordant elements

Secondly, it is pointed out by these critics that a federation on really sound lines would be impossible in India. Its formation will be in actual practice impracticable. The rulers of States who are already enjoying autocratic powers over their subjects will not agree to descend to a status of perfect equality with the other constituents, namely, the British Indian Provinces whose people enjoy considerable civic freedom and political power. They will demand certain special assurances and safeguards. To concede such extraordinary privileges would inevitably negative the federal doctrine. On the other hand, to refuse them would scare the Princes away from the proposed federal union.

There is very great force in these arguments. The evils they envisage are quite real. However, the balance of consideration seems, on the whole, to lie in favour of federation. The point cannot be elaborately discussed in these pages.

XXII. ESTABLISHMENT OF THE FEDERATION AND THE DISTRIBUTION OF SUBJECTS

§1 CONDITIONS TO BE FULFILLED

As it was decided that a federation was the most suitable form of government for India, provision was made for its establishment in the Act of 1935. There was no difficulty about the incorporation of British India in the new arrangement. Constitutionally speaking, the British Parliament is considered competent to prescribe, by an Act, the political status and the administrative machinery of the British Indian territory. But as the federation is to consist of provinces which are intended to be autonomous and self-governing, it was felt that their old status of dependence on and subordination to the central government must cease. They could no longer be looked upon as mere agents of a political superior from whom their powers were derived.

Section 2 of the Act therefore clearly lays down that all rights, authority and jurisdiction, hitherto belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India, are exercisable by His Majesty, except in so far as is otherwise provided by the Act. All powers hitherto enjoyed by the Secretary of State acting singly or in council, by the Governor-General acting singly or in Council and by any Governor or Local Government are supposed to have been resumed by the Crown. The Central and Provincial Governments have thus been reduced, in their relation to each other, to a position of equality in negation. The powers so resumed are taken to have been redistributed by the Crown between the Federal or Central Government on the one hand and the provinces on the other. Both these entities now operate directly on his behalf and as his representatives and derive their authority from the same source. The provinces have therefore obtained a co-ordinate, and not a subordinate, status in their relation to the Federal Government.

The position of the Indian States is quite different. They are not subject to legislation by the British Parliament, and are assured of their internal sovereignty by the treaties, sanads and usages which govern their relations with the Crown. The Crown does, of course, enjoy rights of paramountcy over them, But it cannot resume in respect of the States those powers which it could resume in the case of British India. The States cannot be compelled to join the Indian Federation by Parliamentary enactment. They must join it of their own accord and of their

own free will. The Act of 1935 does not actually inaugurate the Federation of India. It lays down the method and procedure by which the accession of the States may be effected if and when their Rulers think it fit to accede. It also prescribes the conditions which must be satisfied before the Federation can come into existence.

According to Section 6, a Ruler who decides to enter the Federation has to execute what is called an Instrument of Accession. The Instrument of Accession which is acceptable to His Majesty, and which will be binding upon the Ruler, his heirs and successors. He will declare through this Instrument that he has acceded to the Federation and that, subject to the terms of the document, the federal authority shall function in his State to the extent to which he has accepted the Federation. He will also undertake to give due effect within his State to those provisions of the Act which are applicable to it. The Instrument will specify the matters which the Ruler accepts as those in which the federal legislature may make laws for his State, and also the limitations, if any, on the power of that legislature. By a supplementary Instrument the number of such matters may be extended.

His Majesty is free to accept only such Instruments or supplementary Instruments as he considers it proper to do. The Joint Parliamentary Committee suggested that the Instruments should in all cases be the same in form though the list of subjects accepted by a Ruler as federal may not be identical in every case. They were also of the opinion that there should be a kind of standard list of such subjects and that it should be accepted by all the federating States, deviations from it being permitted in exceptional cases. This would ensure the maximum amount of uniformity in the federal sphere, consistently with the divergent claims of the uniting parties.

Section 5 lays down the following two conditions which must be satisfied before the Federation can come into existence. (i) States, the Rulers of which are entitled to choose not less than 52 members of the Council of State, and (ii) States, the aggregate population of which amounts to at least one half of the total population of all the States put together, have to decide to accede to the Federation. Thus the new constitution cannot become an active reality unless a substantial portion of the States' area and people are brought within its orbit. It has been found by the experience of the last few years that the task of securing the accession of the Princes is full of difficulty. A draft Instrument has been presented to them, by the Viceroy as the Crown's Representative, and endless discussions have been held on its clauses and wording. But no agreement is yet reported to have been reached.

After the accession of the requisite number of the States has been signified, it would be lawful for His Majesty by His Majesty to declare by Proclamation that from an appointed day the Federation of India under the Crown has been inaugurated. But before the issue of such a Proclamation an address in that behalf must be presented to His Majesty by each House of Parliament. The authority of the British people is thus again emphasized. It will be realized that the British Indian Provinces, whether Governors' or Chief Commissioners', are to be incorporated in the Federation by the provisions of the Act. Their accession is not left to their voluntary action or choice as in the case of the States. It is ordained for them by Parliament.

After the establishment of the Federation, requests from Rulers for admission have to be transmitted to His Majesty through the Governor-General. If a period of twenty years has elapsed after the establishment, such requests will have to be endorsed by each chamber of the federal legislature. This time-limit will have a salutary effect. It will tend to check frivolous vacillation on the part of some of the Princes and help to complete the federal picture at length within a period of twenty years after it is brought into being.

§2 THREE LISTS OF SUBJECTS AND RESIDUARY POWERS

A federal structure must necessarily provide for two distinct divisions of the governmental sphere. It has to take cognizance of the provinces (or the federating units) and the central organization under which they are united. The jurisdiction of the two authorities requires to be clearly defined. This is usually done by the following method. Certain specified subjects are assigned to the provinces and the rest are then given over to the centre, or the process may be reversed, and particular subjects may be allotted to the centre and the remainder placed under the authority of the provinces. Only one list, enumerating particular items, is necessary under this arrangement. The other group of subjects is automatically prescribed in a general but a negative manner. It consists of an undefined and unparticularized mass of all those items which are not included in the list that is specially prepared.

A more elaborate course is followed in India. An exhaustive and specific list is drawn up for the Central Government and another is similarly drawn up for the provinces. A third large list is further prepared for the concurrent jurisdiction of those two authorities. This is expected to be a useful device for securing uniformity in certain matters without introducing centralization. It is expected to counteract

the tendency towards a vexatious multiplicity of law and practice which would hinder the growth and consciousness of a common nationality. The three lists have been given in the Seventh Schedule of the Act of 1935.

In spite of the punctilious care with which the lists have been compiled by men of experience, it may happen that certain items have escaped attention. Entirely new circumstances and responsibilities may also arise subsequent to the preparation of the lists and they will have to be assigned. A federal constitution must therefore provide for an allocation of residuary powers either to the provinces or to the centre.

The whole trend of modern life is towards integration. Scientific inventions are reducing time and distance and bringing all humanity into one orbit. The federal sphere has been constantly widening in those countries which have that form of government. Political writers have even stated that the federal stage may inevitably lead to the unitary stage. The impulse for union cannot abruptly or arbitrarily stop. The opportunity for mutual contact and understanding that a federation provides is bound to create closer bonds and bring about a greater coherence among the constituent units.

Unfortunately the dispute assumed a communal aspect in India when the proposal for allocation of the residuary powers came up for discussion. The Hindus generally favoured the strengthening of the centre and leaving the residuary powers to it. On the other hand the Muslims preferred the opposite course as being more desirable in the interests of minorities. Parliament had to give its decision on these conflicting claims, and it came to the comfortable conclusion that residuary powers could most safely and conveniently rest neither with the centre nor with the provinces, but in effect with the Governor-General. Section 104 of the Act says that the Governor-General may empower either the federal or the provincial legislature to enact a law with reference to any matter not enumerated in the Central, Provincial and Concurrent lists.

The following are some of the important items in the Federal Legislative List. His Majesty's naval, military and air forces borne on the Indian establishment in naval, military and air force works, local self-government in cantonment areas, external affairs, ecclesiastical affairs, currency and coinage, public debt of the Federation, posts, telegraphs, telephones, wireless, broadcasting, post-office savings bank, federal Public Services and Federal Public Service Commission, Benares Hindu University and Aligarh Muslim University, survey of India, and historical monuments, census, admission into and

emigration and expulsion from India; federal railways, maritime shipping and navigation, major ports, aircraft and air navigation; lighthouses, copyright and inventions, cheques, bills of exchange, etc., arms and ammunition, opium, so far as regards cultivation and manufacture; petroleum; corporations; development of industries; labour in mines and oil-fields, insurance; banking; customs duties; excise duties on tobacco and other goods manufactured or produced in India except (a) alcoholic liquors, (b) opium, Indian hemp and other narcotics, and non-narcotic drugs, (c) medicinal and toilet preparations containing alcohol, corporation tax; salt, state lotteries; naturalization, taxes on income other than agricultural income; taxes on capital, succession duties, stamp duty on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, etc., terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights

The following are some of the important items in the Provincial Legislative List, which contains in all 54 items public order and justice and courts, police, prisons, reformatories, etc., public debt of the province, provincial Public Services and the Provincial Public Service Commission, land acquisition, local government, public health and sanitation, hospitals and dispensaries, education, communications, irrigation and canals, etc., agriculture, land tenures, agricultural loans, etc., fisheries, weights and measures, forests, gas and gas-works, development of industries in the province, trade and commerce within the province, intoxicating liquors and narcotic drugs, unemployment and poor relief, theatres and cinemas but not the sanction of cinema films for exhibition, betting and gambling, co-operation, land revenue, excise duties on alcoholic liquors for human consumption, opium, medicinal preparations containing alcohol, taxes on agricultural income, taxes on land and buildings, charities and charitable institutions, duties in respect of succession to agricultural land, capitation taxes, taxes on professions, trades callings and employments, subject to section 142A of the Act,¹ taxes on animals and boats, taxes on advertisements and sale of goods, local cesses, taxes on luxuries, entertainments, amusements, betting, gambling, etc., stamp duties on documents not mentioned in the Federal List, tolls, taxes on vehicles whether mechanically propelled or not, taxes on the consumption or sale of electricity; universities, except those at Benares and Aligarh²

The following are some of the important items in the Concurrent Legislative List, which contains in all 36 items.

¹ As amended by the *India and Burma (Miscellaneous Amendments) Act, 1940.*

² The last three items were added by the *India and Burma (Miscellaneous Amendments) Act, 1940.*

criminal law; criminal procedure, civil procedure, evidence and oaths, marriage and divorce, adoption, etc., wills, intestacy, etc.; transfer of property other than agricultural land, registration of deeds and documents, etc., trusts and trustees, contracts; bankruptcy; non-judicial stamp duties, legal medical and other professions, newspapers, books and printing-presses; lunacy, poisons and dangerous drugs, boilers, European vagrancy; factories; welfare of labour, unemployment insurance, trade unions, industrial and labour disputes, contagious diseases; electricity; inland shipping and navigation, sanctioning of cinematograph films for exhibition, detenus

XXIII. THE FEDERAL EXECUTIVE

§1 THE POSITION AND POWERS OF THE CROWN

THE sovereignty of the British King is supposed to extend **Sovereignty of the Crown** to the whole of the British Empire, and he automatically becomes the legal head of every system of government and administration that may be created for the different component parts of that empire. Constitutions of self-governing Dominions like Canada and Australia have been framed on the basis that the King is their supreme sovereign. The same is also true of what are known as the Crown Colonies. By the Act of 1935, British Indian Provinces and the Indian States are to be federally united under the British Crown. The King will become the highest legal dignitary in the Federation of India as he is in the existing unitary government of the country.

But it is an invariable dictum of the British constitution that **Constitutional position** the King never acts except on the advice of his responsible ministers. All his powers are exercised for him by them. In matters pertaining to the Dominions he is advised by the Dominions' Ministers who are responsible to their own legislatures and peoples, in respect of territories which do not enjoy rights of full self-government, advice is tendered to the Sovereign by Ministers who are responsible to the British Parliament and the British nation.

As the Joint Parliamentary Committee remark, 'The dominion and authority of the Crown extends over the **Two sources of his powers** whole of British India. It is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company.'

In the federal constitution which is envisaged by the Act of **Statutory powers** 1935, certain powers are specifically vested in the Crown. For example, the appointment of the Governor-General, the Governors and the Commander-in-Chief is to be made by His Majesty, he has to issue Instruments of Instruction to the Governor-General and the Governors, many orders-in-council pertaining to various subjects have to be issued by him, he can disallow laws passed by either the federal or provincial legislatures, Instruments of Accession executed by Rulers of States have to be approved of and accepted by him, it is in his power to issue a proclamation establishing the Federation of India. This is not an exhaustive list, other powers have also been mentioned in the Act as being exercisable

by His Majesty with reference to the government of British India.

Among the prerogative powers of the King may be mentioned
Prerogative powers the control of foreign policy including the right to cede territory or annex it, right to escheat gold and silver mines and treasure troves, immunity from civil or criminal proceedings, right to grant honours, right to grant pardon, reprieve, respite or remission of punishment, and so on

Though the Indian States were allowed to retain their internal
Paramountcy sovereignty to a great extent by the treaties that were made with them by the East India Company in the process of conquest, the Crown has always been considered to have the rights of Paramountcy over them. The relations between the States and the Crown are not on a purely contractual basis. The authority of the suzerain has been continually clarified and enlarged by the Crown's exclusive right of interpreting the old treaties in the light of modern conditions, and by the custom, practice and usage of the political department of the Government of India. Even the Butler Committee could not define the scope of paramountcy in a particular formula. 'The relation between the Paramount Power and the States', they said, 'is not fixed, rigid or static, but adaptable, mobile or dynamic in character. Paramountcy must remain paramount.'

It must be clearly understood that all these powers, though
These powers are not actually exercised by the Crown technically vesting or inhering in the Crown, are not expected to be directly exercised by him at his own free will or discretion. In the British constitutional philosophy, the monarch is not supposed to play an active part in the administration of the state. Many powers are nominally held by him, but they are actually exercised on his behalf by Ministers who are, in the last resort, responsible to the people. In the case of India, the powers assigned to or enjoyed by His Majesty will not be exercised by popular Indian Ministers but by the Secretary of State for India and the British Cabinet, who are the servants of the British public.

§2 INTRODUCTION OF DYARCHY

The Act of 1935 was not intended to satisfy India's demand
No immediate grant of full self-government for an immediate introduction of full-fledged responsible government, both in the federal centre and in the provinces. Parliament was not prepared to accept the claim for such a wholesale and radical alteration of the Indian constitution. In spite of the keen demand of the Indian people, no new preamble, stating clearly that it was the intention of Parliament to confer upon India at an early date Dominion Status of the Statute of Westminster variety, was framed for the Act of 1935. The

utmost concession that was shown to Indian opinion was to keep unrepealed the halting and unsatisfactory pronouncement which had formed the preamble of the Act of 1919

The changes proposed in the new Act are inspired by a restricted ideal and toned down by numerous limitations. The principle of responsibility will be introduced in the Federal Government to a small extent, but otherwise its bureaucratic character will be maintained. To put it briefly, a dyarchical system will be established in the federal sphere. The use of that expression has been scrupulously avoided in the Act, though the Joint Parliamentary Committee freely mention it in their Report.

At the head of the Federal Government will be the Governor-General of India and Crown's Representative. The two offices were not distinct till the formulation of the federal scheme. The Crown's authority and jurisdiction over both British India and the Indian States were exercised by the Governor-General-in-Council under the general supervision of the Secretary of State. But now they have been separated. The Crown's Representative alone will hereafter perform the duties and functions of the Crown in its relations with the Indian States. The federal Ministers will have no voice in these matters. It is lawful for His Majesty to appoint one person to hold both the offices, and normally speaking the Governor-General and Crown's Representative is expected to be one and the same man.

Subjects in the Federal Legislative List will be divided into two groups. One, which may for convenience be called Reserved though the word is not used in the Act, will comprise defence, ecclesiastical affairs, external affairs except the relations between the Federation and any of the Dominions in the British Empire, and tribal areas. The other, which may similarly be designated as Transferred, will include all the remaining federal items.

The Reserved departments will be administered by the Governor-General with the advice of a new type of officials called Counsellors. They will not form a council like the present Executive Council, and will not be responsible to the federal legislature but only to the Governor-General. The Transferred departments will be administered by him with the aid and advice of a Council of Ministers who will be members of the federal legislature and responsible to it. The budget will be common to both the parts of government, and the same legislature will make laws for both.

In studying the federal executive, attention will have to be paid to the Governor-General, Counsellors and Ministers, and to their collective working under the dyarchical plan. This is done separately in the following sections.

§8. THE GOVERNOR-GENERAL

The Governor-General of India will, as now, be appointed by His Majesty on the advice of the Prime Minister of Britain, and will be expected to possess the same qualifications that are possessed by him today. The Viceroy or Crown's Representative will, as a normal practice, be combined in his person, and he will continue to enjoy immense authority and prestige. The importance of the office and of the personality which holds it will not diminish even after the inauguration of the Federation.

The Governor-General will have many powers, ordinary and extraordinary, in the executive, legislative and financial domains of government, as he has at present. But a new feature of the Act is that three different ways for the exercise of those powers have been defined. These ways apply to all departments of government whether Reserved or Transferred and cover the whole sphere of the civil and military activity of the State.

(i) *Acting in his discretion* In some cases, the Governor-General has to act in his discretion, in doing so he need not consult his Ministers at all (though he is not definitely prevented from consulting them), and may take decisions on his own responsibility. It has been calculated that no less than 94 different sections of the Act make a mention of this power and direct the Governor-General to exercise it. They refer to practically every important governmental activity and include subjects like the Reserved departments, rules for the transaction of ministerial business and keeping the Governor-General informed about certain matters, assent to Bills, summoning legislative chambers for a joint sitting, suspending the constitution, control over the actions of the Provincial Governments, the Reserve Bank, and the Railway Authority.

(ii) *In his individual judgement* In some cases, the Governor-General is asked to exercise his individual judgement, in doing so he is expected to take the advice of his Ministers, but need not necessarily accept it and act accordingly. This power is mentioned in 32 different sections of the Act and they also concern many important subjects, including items like the special responsibilities, the Advocate-General, appointments and postings of certain officials, the High Commissioner, etc.

(iii) *On the advice of Ministers* In the cases that remain the Governor-General has to act on the advice of his Ministers and therefore their advice must be sought and accepted. The field for action that is left after the above deductions are made is extremely limited.

It is laid down in section 14 that when the Governor-General is required to act in his discretion or in the exercise of his individual judgement, he shall be under the general control of the Secretary of State and shall comply with such particular

directions as may from time to time be given by him. Parliamentary authority over a large field of Indian administration is thus maintained even in the new constitution, and the representatives of the Indian people have been deprived of an effective voice in those matters.

The Governor-General may appoint Counsellors, not exceeding three in number, to assist him in the administration of what have been described here as the Reserved subjects of the Federation. His relations with them are not defined in the Act, and the method of their working will obviously be determined by conventions and practice. But it is clear that they will have no kind of veto over any of the actions of the Governor-General.

The Governor-General has also been given the power to appoint a Financial Adviser who shall hold office during his pleasure, and whose salary and other conditions of service will be determined by him.

Technically speaking, it is the Governor-General who has to choose and summon the federal ministers. But as they must enjoy the confidence of the legislature, his power in this respect may, in practice, prove to be severely limited. He has however the right to preside over their meetings in his discretion, and to make rules of business for them.

The Governor-General has been given considerable powers over the legislature. He can summon, prorogue, and dissolve the Federal Assembly. He can make rules of procedure for regulating the business before either house. His previous sanction is required for the introduction of many important kinds of Bills,¹ and his assent is required for all Bills passed by the legislature before they can become Acts. He may reserve certain Bills for the assent of His Majesty. The power to summon joint sittings of the two chambers of the federal legislature is vested in him.

In addition to these powers, the Governor-General can issue ordinances, either on the advice of his Ministers or in his discretion. He can also pass what will be known as the Governor-General's Acts entirely on his own authority and without any reference to the legislative bodies if he thinks it necessary to do so. This is of course an exceptional and a very comprehensive power, and takes the place of the existing method of certification.²

¹ As for example, Bills pertaining to coinage or currency the Reserve Bank, the Federal Railway Authority, the Federal Court, the Public Service Commission and Bills which are intended to repeal, amend or affect any Act of Parliament extending to British India, or Governor-General's or Governors' Acts or Acts relating to police force or matters where the Governor-General has to act in his discretion, etc.

² Government of India Act, 1935, sections 42-4.

The provincial Governors and Governments are under the control of the Governor-General in several respects. Section 54 lays down that when the Governor is required to act in his discretion or to exercise his individual judgement, he shall be under the general control of the Governor-General and shall comply with such particular directions as may be given by him from time to time. A large field is covered by this provision. It has been calculated that there are about 43 sections of the Act in which the Governor-General's superior powers in respect of certain provincial matters have been specifically mentioned. Besides, section 126 (clause 5) definitely empowers the Governor-General, acting in his discretion, to issue orders to a Governor as to how the executive authority in the province should be exercised for preventing any grave menace to the peace and tranquillity of India.

Over and above all these powers, the Governor-General has been invested with what are described as Special Responsibilities. This legislative innovation is a unique product of the Act of 1935. Section 12 defines them as follows: (a) prevention of any grave menace to the peace or tranquillity of India or any part thereof, (b) safeguarding of the financial stability and credit of the Federation, (c) and (d) safeguarding of the legitimate interests of the minorities and the rights and interests of the Services, (e) preventing discrimination against the United Kingdom as mentioned in sections 111 to 121 of the Act, (f) preventing goods of United Kingdom or Burmese origin from being subjected to discrimination or penal treatment, (g) protection of the rights of any Indian State or its Ruler, (h) securing the due discharge of those functions which have to be exercised in his discretion or in his individual judgement.

These Special Responsibilities have to be fulfilled by the Governor-General exercising his individual judgement whenever he thinks any action in that regard is necessary.

It will be seen that every important aspect of administration —peace and order, finance, the Services, fiscal freedom of India, minorities, discrimination against Britain—has been included in the above enumeration. It represents a great concentration and combination of over-riding powers, both tangible and intangible, defined and undefined. Their frequent or infrequent exercise will appreciably affect the value of the new constitution.

It must also be clearly understood that the formulation and definition of special Responsibilities is not merely equivalent to reserving a certain number of departments for the Governor-General's or Governor's exclusive jurisdiction, as is done in dyarchy. The division introduced by them is not departmental.

and physical It should rather be described as psychological
They apply Special Responsibilities lead to and have to be
to the whole fulfilled by the functions of interpretation, judge-
sphere of ment and opinion They are intended to cover
government the whole domain of administration, whether
 ministerial or bureaucratic, federal or provincial There is no sub-
 ject which is beyond their reach and range, no executive action
 which is immune from their control

If for any reason the constitutional machinery provided by
Issue of the Act fails to work and any of the wheels of
proclamation government threaten to become immobile, the
in an Governor-General has been given special power to
emergency combat the situation Section 45 prescribes that
 if the Governor-General is satisfied that a situation has arisen
 in which the government of the Federation cannot be carried
 on in accordance with the provisions of the Act, he may issue
 a Proclamation, and thereby (a) declare that his functions
 shall, to such extent as may be specified in the Proclamation, be
 exercised by him in his discretion, (b) assume to himself all or
 any of the powers vested in or exercisable by any federal body
 or authority

The Proclamation may contain such incidental and conse-
 quential provisions as may be necessary or desirable for giving
 effect to the objects of the Proclamation The operation of any
 provision of the Act relating to any federal body or authority
 may be suspended in whole or in part, excepting the provisions
 that relate to the Federal Court

Such a Proclamation has to be communicated forthwith to
 the Secretary of State and laid by him before each House of Par-
 liament It will cease to operate at the expiration of six months,
 unless Parliament by resolutions approves its continuance for
 further periods, but in no case shall it continue for more than
 three years

Laws made by the Governor-General in virtue of the powers
 assumed by him by such a Proclamation shall have effect for two
 years after the Proclamation has ceased to have effect But
 they may be repealed sooner or re-enacted by the legislature
 Thus all the powers of the Federation can be taken over by the
 Governor-General in a grave emergency

§4 THE COUNSELLORS AND FINANCIAL ADVISER

For the administration of what has been described as the
Appointment Reserved part of the Federal Government, section
and number 11 of the Act has provided for the appointment
 of a separate set of officials They are to be known as Coun-
 sellors They are to be appointed by the Governor-General and
 their number is not to exceed three Their salaries and con-
 ditions of service will be prescribed by His Majesty

It will be seen that the appointment of Counsellors is not made obligatory upon the Governor-General, though **Probable composition** of course it is unthinkable that he would not appoint them. The tenure of their office is not fixed by law nor are their qualifications defined by it. The Act has not said that they will form a Council and therefore they will have no corporate existence as the Executive Council today has or the federal ministry may come to have. Functions in respect of the Reserved departments—that is defence, ecclesiastical affairs, external affairs except relations with the Dominions, and tribal areas—are to be exercised by the Governor-General in his discretion, but he must have the assistance of men of experience, talent and representative character in the performance of the task. It is therefore not unlikely that most of the Counsellors will be members of the I.C.S. of long standing and service. Whether an Indian will be appointed to the post can be shown only by experience. But in any case, the Counsellors' opinions are not binding upon the Governor-General and they are not intended to exercise any constitutional restraint over him.

In addition to these Counsellors, the Governor-General is **Financial Adviser** empowered by section 15 to appoint a Financial Adviser. It will be his duty to assist the Governor-General in the discharge of his Special Responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon financial matters if he is consulted. He will hold office during the pleasure of the Governor-General, who will also prescribe his salary and other conditions of service. It is provided that after the appointment of the first Financial Adviser, the Governor-General should consult his Ministers in making subsequent appointments to the office.

The Financial Adviser must not be confounded with the Finance Minister, who will be in charge of the Finance Department, and as a member of the federal ministry will be responsible to the legislature for his actions. What exactly will be the relationship of the Financial Adviser to the constitutional machine, whether his presence will facilitate the exercise by the Governor-General of his special powers, can be seen only by experience. But it is possible that the creation of this new office may bring about some conflict of jurisdiction and complicate the process of Government in the federal sphere.

Though defence is a Reserved subject under the Governor-General, the Act has made specific provision for **Commander-in-Chief** the appointment of a Commander-in-Chief of His Majesty's Forces. Section 2 lays down that he will be appointed by His Majesty by warrant under the Royal Sign Manual, and section 232 lays down that his pay and allowances and other conditions of service will be such as His Majesty-in-Council may direct.

§5 THE COUNCIL OF MINISTERS

For the administration of the subjects which have not been reserved, section 9 of the Act provides that there shall be a Council of Ministers. They will aid and advise the Governor-General in the exercise of his functions except when he is required to act in his discretion. But the scope for ministerial authority will not be large because, as has been pointed out already, the discretionary powers of the Governor-General are very wide and include the management of such important subjects as defence and external affairs, and the numerous reservations, safeguards and exceptional powers with which the Governor-General is invested under the Act.

The Ministers will be chosen and summoned by the Governor-General, but as they are to be responsible to the federal legislature he will not have an unfettered choice. He must accept those who have a clear majority of votes in the legislative chambers. There can be no academic or any other specific qualifications prescribed for Ministers, but they must be members of one or the other house of the legislature and have the solid support of the majority of their votes. Ministers would in fact be prominent members of the party in power and many of them would be among the foremost political leaders of the country. Their salaries will be fixed by an act of the legislature though the amounts paid to individual Ministers would not be annually voted at the time of the budget. In fact, they have been put in the non-votable list. The salary of a Minister will not be varied during his term of office. If a Minister has to be censured, it cannot be done by proposing a cut in his salary at the time of the passing of the budget, a direct motion of no-confidence would have to be moved for that purpose.

The Ministers will be sworn in as a council and the Governor-General may preside over it in his discretion. There is no mention of the office of Prime Minister in the Act, but the Instrument of Instructions to the Governor-General says that the latter, in the selection of his Ministers, should consult the person who in his judgement is most likely to command a stable majority in the legislature. This implies that there will be a leader of the Ministry who will function as the Prime Minister. The same Instruction adds that the Ministry should include, as far as possible, representatives of the federated States and members of the important minority communities, and that it should be able collectively to command the confidence of the legislature and be possessed of the sense of joint responsibility. The parliamentary system and party government may thus be introduced in the federal sphere. However, difficulties may be experienced in maintaining the homo-

generity and discipline of a party and at the same time including in the Ministry representatives of the minorities and the States in spite of the fact that such persons are not members of the party concerned and are beyond its direct control

The number of Ministers is not to be more than ten. No such limit has been put down in the case of the provincial Ministers. Allocation of portfolios will be technically the duty of the Governor-General though in practice it will devolve upon the Prime Minister. However, the rules of business must include provisions requiring Ministers and secretaries to Government to transmit to the Governor-General all the information about matters specified in the rules, or any other information that may be required by him. They must also bring to his notice any matter which involves or is likely to involve any of his Special Responsibilities.

§6 THE WORKING OF DYARCHY

The experiment of dyarchy was tried in the provinces for sixteen years after the introduction of the Montford Reforms and was proved to be incapable of yielding really satisfactory results. It was therefore given up in favour of provincial autonomy. The same system is however proposed for the federal centre. The question that naturally arises is whether it has chances of better success in the new sphere that is designated for its operation.

The Joint Parliamentary Committee were clearly of the opinion that so long as some political powers are to be withheld from India, such division in the functions of government would be inevitable. But they urged that given the desire and the will, even a divided government of this type can work smoothly and give excellent results.

The Counsellors and Ministers in the Federation of India will have a fundamentally different status. The former will be bureaucratic in composition and outlook and will not be subordinate to the legislature. The latter will be the representatives and servants of the public and fully responsible to the legislature. The spheres of their activities have been marked out and defined. But it is recognized that, in the nature of things, there cannot be a watertight differentiation between the spheres and functions of government. Hence extraordinary and overriding powers have been given to the Governor-General to settle all points of dispute and administrative difficulties and deadlocks.

It is also recommended that the Reserved and Transferred halves should not look upon themselves as strangers to each other or even as rivals of each other. The working of the government should be based on the concept that they are part-

ners in a common cause and ought to take each other into confidence. The practice of mutual consultation and exchange of opinion and advice between them must become common, so that they can effectively influence each other's policies.

The Governor-General is specially instructed in his Instrument of Instructions¹ to inculcate the spirit and tradition of collective responsibility among his Ministers, and also to encourage the practice of joint consultation between himself, his Counsellors and Ministers. This is particularly emphasized in the case of the department of defence, the views of Ministers should be ascertained when the appointment of Indian officers to the Indian forces or the employment of Indian forces on service outside India are concerned. It is also one of the Instructions that the federal department of finance should be kept in close touch with the finance of defence, and that the estimates of proposed expenditure for defence should be laid before the legislature after consultation with the Finance Minister and the Ministry.

These Instructions are quite clear and specific, and if carried out in letter and spirit will give very salutary results. But the equipoise set up by dyarchy is extremely delicate. The factor of personal temperament is vital in its operation. The compromise between incompatibles that it contemplates and embodies is so precarious that the unintended shock of a straightforward and simple action may suddenly throw the whole mechanism out of gear. Apart from the fact that India cannot be reconciled to the ideal of a truncated and heavily safeguarded self-government, the scheme of dyarchy cannot but evoke a feeling of scepticism on account of its inherent defects and conflicting loyalties.

Apart from these evils which are inseparable from the dvarchical structure, the degree of progress contemplated in the new constitution is vitiated by the addition of reactionary encumbrances. The transfer of political power into the hands of Indians is likely to be more apparent than real, because it is accompanied by reservations and safeguards which are all-pervasive in their conception and overwhelming in their operation. A most strenuous effort seems to have been made to discover every possibility of what, in the Englishman's view, may be an abuse of power by Indians. The vigorous exposition of this point by the Joint Parliamentary Committee leaves no doubt about the Englishman's hopes and fears in this respect. The reader is inevitably led to feel that Parliament is eager to perform an impossible feat. It seems to be desirous of parting with power and at the same time retaining it.

¹ For a further explanation of the Instrument of Instructions, see pp 292-5

XXIV THE FEDERAL LEGISLATURE

§1 THE BICAMERAL SYSTEM

It is a matter of controversy whether two legislative chambers are necessary in unitary states, though they exist in practically all of them. Since the Act of 1919 India has been living under the bicameral system.

The method of two chambers is generally believed to be indispensable in the working of a federation. It is a very convenient mechanism for symbolizing the essential equality of the federating units and also their inevitable inequality in population and size. The upper house in a federation represents the constituent states as states, and as far as possible its seats are equally or approximately equally distributed among all of them. Here the smaller states are in a privileged position; they are guaranteed against tyrannical molestation and persecution by the bigger ones. On the other hand, the lower house represents the total population of the federation and its seats are distributed among the states in proportion to their numbers. Here the bigger states are protected from irresponsible caprice or jealousy on the part of the smaller ones. No federal law can be finally passed unless it is assented to by both the houses.

§2 THE CHAMBERS

Chapter III of Part II of the Government of India Act and the First Schedule prescribe the constitution, powers and procedure of the federal legislature in India. The upper chamber will be known as before as the Council of State, the lower chamber will be known as the House of Assembly. The following table shows their composition.

COMPOSITION OF THE FEDERAL LEGISLATURE

Name	British Indian Representatives			Representatives of Indian States nominated by their Rulers	Total
	Elected	Chosen by the Governor-General	Total	Not more than	Not more than
Council of State	150	6	156	104	260
House of Assembly	250		250	125	375

Election to a legislature can be either direct or indirect. In the former case, territorial and other constituencies are formed specifically for the purpose of sending representatives to a legislative chamber, and persons chosen by them are permitted straightway to take their seats in it. In indirect elections at least one more intermediary is added. Representatives who sit in the legislature under this system are already elected members of some other body like a municipality, a local board, a local legislature or a specially constituted electoral college. There is first of all an election of the electors and then finally election to the legislature.

The method of direct election has been commended by political writers. It establishes immediate contact between the legislator and the citizen and brings home to the former his responsibility as an elected representative. If the will of the demos is to be effectively expressed and enforced, there should be no complication or obstacle created by the presence of legalized middlemen. Indirect election may make the electoral machinery extremely clumsy and obscure to the masses, and cause on the whole more annoyance than convenience. Worse still, it offers great scope for political corruption, dishonesty and bribery.

The indirect system existed in India even after the Morley-Minto Reforms but it was scrapped by the Joint Parliamentary Committee which reported on the Bill of 1919. Since that time, elections to all legislatures in India, both central and provincial, have been direct. The White Paper of 1933 had recommended the continuance of the same system. However, the Joint Parliamentary Committee which reported on it a year later took the opposite view and recommended that for both the chambers of the federal legislature the method of election should be indirect.

The Indian public protested against this retrograde move, and Parliament was at last persuaded to make a small concession. The Act lays down that elections to the upper chamber, i.e. the Council of State, should be direct, those to the lower chamber, i.e. the House of Assembly, should be indirect. This is exactly the opposite of the accepted constitutional principle and practice that the lower and popular chamber should be directly elected by the people, and the upper chamber which represents the federating units may be elected indirectly.

The chief reason given for this reactionary departure from the White Paper proposal was that in an extensive and populous country like India, direct election was bound to lead to one of two evils. Either the constituencies would have to be excessively large or the number of members of the legislature would have to be abnormal and unwieldy.

The committee felt that neither of the alternatives could be accepted

However, it could be contended that the maximum numerical strength of the legislature as prescribed in the **They are not convincing** Act could bear some increase without creating undue confusion or inconvenience. The territorial areas of the U S A, Canada and Australia are much bigger than the area of India, and at least in the U S A the number of voters is not smaller than the total population proposed to be enfranchised in this country. Yet in none of those federations has it been found necessary to adopt the indirect, in preference to the direct, system of election for the lower house. The latter may add to the difficulty of constitutional working, but the former produces the more dangerous result of diluting democracy itself.

The seats in the Council of State assigned to a province **Elections to the Council of State** will be distributed among territorial constituencies which will be general and communal, the latter for Muslims and Sikhs. For election to seats reserved for women, all members of the provincial legislature, men and women, will be electors. As the number of Anglo-Indians and Europeans and Indian Christians in an individual province will be small, special electoral colleges will be formed for the whole of British India for election of their representatives to the Council of State. The colleges will be composed of such Anglo-Indians, Europeans and Indian Christians respectively as are members of the Legislative Council of the province or of its Legislative Assembly. For seats allotted to the scheduled castes, persons of those castes who are members of the provincial legislature will be electors.

A high property qualification will be required for the right to vote at elections to the Council of State. It has yet to be determined. But it will confer the vote on only a small minority of aristocrats and industrial and commercial magnates.

Members of the House of Assembly assigned to a province **Elections to the Assembly** will not be elected directly by constituencies, territorial and communal, specially formed for that purpose in the provincial area. The Legislative Assembly of the province will be the body of electors. Its Muslim and Sikh members will elect the Muslim and Sikh representatives, those holding general seats in it will vote in the election to the general seats of the Federal Assembly. Women members will be elected by an electoral college of all women who are members of the Legislative Assembly of any province. Anglo-Indian, European and Indian Christian seats will be filled by persons who are elected by electoral colleges consisting of members of those communities who are in the provincial Legislative Assemblies.

Both the federal legislatures will have elected presidents, the Assembly president being known as the Speaker.

The Federal Assembly will have a tenure of five years, but **Tenure** may be dissolved earlier. The Council of State will be a permanent body not subject to dissolution. One-third of the total number of its members will retire every three years, and the term of an individual member will be nine years. The details of the initial retirements have been given in the schedule.

The two chambers will have legislative, administrative and **Powers** financial powers as at present and will be co-ordinate in almost all respects. The voting of grants of expenditure in the votable portion of the budget will not be an exclusive privilege of the lower house as at present, but has been extended to the Council of State. Joint sittings of the chambers will be held whenever there is a difference of opinion between them on a legislative or financial issue.

The following tables give the allocation of seats in the Council of State and the House of Assembly.

COUNCIL OF STATE REPRESENTATIVES OF BRITISH INDIA

Province or community	Total seats	General seats	Seats for scheduled castes	Sikh seats	Muslim seats	Women's seats
Madras	20	14	1		4	1
Bombay	16	10	1	.	4	1
Bengal	20	8	1	..	10	1
United Provinces	20	11	1		7	1
Punjab	16	3		4	8	1
Bihar	16	10	1		4	1
Central Provinces and Berar	8	6	1		1	.
Assam	6	3			2	.
North-West Frontier Province	6	1			4	
Orissa	5	4			1	
Sind	5	2			3	
British Baluchistan	1				1	..
Delhi	1	1				
Ajmer-Merwara	1	1				
Coorg	1	1				
Chosen by the Governor-General in his discretion	6				.	..
Anglo-Indians	1			.	...
Europeans	7					.
Indian Christians	2			.	.	..
Total	156	75	6	4	49	6

THE FEDERAL ASSEMBLY REPRESENTATIVES OF BRITISH INDIA

Province	Total seats	Total of general seats	General seats reserved for scheduled castes	Sikh seats	Muslim seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for commerce and industry	Seats for landholders	Seats for labour	Women's seats
Madras	37	19	4	.	8	1	1	2	2	1	1	2
Bombay	30	13	2	.	6	1	1	1	3	1	2	2
Bengal	37	10	3	.	17	1	1	1	3	1	2	1
United Provinces	37	19	3	.	12	1	1	1	1	1	1	1
Punjab	30	6	1	6	14	1	1	1	1	1	1	1
Bihar	30	16	2	.	9	.	1	1	1	1	1	1
Central Provinces and Berar	15	9	2	.	3	.	1	1	..	1	1	1
Assam	16	4	1	.	4	.	.	..	..	..	1	..
North-West Frontier Province	5	1	1	.	1	.	.	..	..	..	..	..
Orissa	5	4	1	.	1	.	1	..	..	..	..	..
Sind	5	1	1	.	3	.	.	..	..	..	..	..
British Baluchistan	1	..	1	.	1	.	.	..	..	..	..	..
Delhi	2	1	..	.	1	.	.	..	..	..	..	..
Ajmer-Merwara	1	1	..	.	.	.	.	..	..	..	..	..
Coorg	1	1	..	.	.	.	.	..	..	..	..	..
Non-Provincial seats	4	.	..	.	.	.	.	..	8	..	1	..
Total	250	105	19	6	82	4	8	8	11	7	10	9

STATEMENT SHOWING THE NUMBER OF SEATS ASSIGNED TO THE
BIGGER STATES IN THE FEDERAL LEGISLATURE

Name of State	No of seats in the Federal Council of State	No of seats in the Federal Legislative Assembly
Hyderabad	5	16
Mysore	3	7
Kashmir	3	4
Gwalior	3	4
Baroda	3	3
Kalat	2	1
Rampur	1	1
Benares	1	1
Travancore	2	5
Cochin	2	1
Pudukkottai	1	1
Banganapalle		
Sandur	2	2
Udaipur		
Jaipur	2	3
Jodhpur	2	2
Bikaner	2	1
Alwar	1	1
Bharatpur	1	1
Indore	2	2
Bhopal	2	1
Rewa	2	2
Jhabua	1	1
Sailana		
Sitarnau		
Cutch	1	1
Idar	1	1
Nawanagar	1	1
Bhavnagar	1	1
Junagarh	1	1
Rajpipla	1	1
Palanpur	...	...
Dhrangadhra	1	1
Gondal	1	1
Porbunder		
Morvi	1	1
Cambay	1	1
Dharampur		
Balasore	1	1
Bansda		
Sachin	1	1
Jawhar		
Danta	1	1
Dhrol		
Lumbdi	1	1
Wadhwan		
Rajkot	1	1

STATEMENT SHOWING THE NUMBER OF SEATS ASSIGNED TO THE
BIGGER STATES IN THE FEDERAL LEGISLATURE

Name of State	No of seats in the Federal Council of State	No of seats in the Federal Legislative Assembly
Kolhapur	2	1
Sangli	1	1
Sawantwadi }		
Janjira	1	1
Mudhol }		
Bhor }		
Jamkhanda	1	1
Miraj Senior		
Miraj Junior		
Kurundwad Senior		
Kurundwad Junior	1	1
Akalkot		
Phaltan		
Jat		
Aundh	2	2
Ramdurgh }		
Patiala	1	1
Khairpur	1	1
Kapurthala	1	1
Nabha	1	1
Faridkot	1	1
Malerkotla }		
Loharu	1	1
Cooch Bihar		
Tripura	1	1
Manipur	1	1
Mayurbhanj }		
Sonepur		

§3 EFFECT OF THE CHANGES

It is necessary to explain the probable effects of the changes that have been made in the constitution and powers of the central legislature

The present nominated and official bloc will vanish almost completely, except for six seats in the Council of State. This is a wholesome disappearance of that bureaucratic control of voting which offends against the fundamentals of democratic polity. It may be argued that the rigidity of party discipline and the loss of individuality that it involves are equally serious defects of democracy. But it cannot be forgotten that those installed as party leaders occupy that position by the choice of their followers and are liable to deposition and dismissal by them.

However, much of the good that will result from the withdrawal of the nominated and official bloc may be undone by the inevitable introduction of a new element. The delegates from Indian States will form a substantial portion of both houses. The law does not prescribe, though it does not prohibit, the election of any of them by the subjects of States. They are to be nominated by their rulers. It is probable that some of the princes will cause constituencies to be formed in their States and will allow them to elect representatives to the federal legislature. However, such a self-imposed constitutional restraint will be the exception and not the rule. A majority of the Indian State representatives will not be elected by the people of the States. They will be nominees of absolute masters and instruments of their will. And in the delicate environment of paramountcy, the autocratic masters themselves may prove to be unduly susceptible to the influence of the Department of the Crown's Representative.

However, on the assumption that the future constitution of the country must be an all-India federation in phase including the Indian States, the incongruity caused by the presence of a large non-elected element in what is intended to be a representative chamber has to be faced, otherwise the rulers of States will not accede to the federation. There is comfort in the thought that such a stage, though inevitable, is likely to be temporary and transitional. It is more than probable that the closer impact between the dynamic ideals and activity of British India and the static outlook and life of the States will accelerate political consciousness in the subjects of the latter and ripen in their rulers the healthy spirit of progressive constitutionalism.

The Council of State will be an assemblage of vested interests, reactionary oligarchs and conservative politicians. The franchise for its election will be exceptionally high, 40 per cent of its membership will be constituted by State nominees. Besides, it will be a permanent body and therefore will not be subject to that wholesome cleansing which is periodically brought about by a dissolution and general election. The abnormally long term of nine years for members will breed irresponsibility and defiance in the legislators, because they will not be restrained by the thought of having to face their masters, the electors, at short intervals.

Upon this narrow-based upper chamber the Act of 1935 has conferred a power which in a democratic polity is an exclusive privilege of the lower chamber. The voting of grants of expenditure was denied to the Council of State by the Act of 1919. But the federal counterpart of that chamber will be possessed of that privilege. In short, everything seems to have conspired

to make the upper chamber a strong instrument for checking the advance of democracy

The federal budget will be divided into votable and non-votable items as at present, and over 70 per cent of the total expenditure will be beyond the control of the legislature. In this respect, there is no change for the better. The absence of financial power imparts an air of unreality to responsible government and tends to reduce it to a mockery

It is pointed out by the advocates of federation that all these defects, though real, may not prove so serious in actual practice as hostile critics may be led to imagine. For instance, the attempt to 'inarry' democratic British India and feudal princedoms in a single federation will be very difficult. Still, it is inevitable that as political consciousness grows and agitation among the States people for political rights becomes more and more intense, Indian Princes will have to assume the status of constitutional rulers like the monarchs of Europe. Paramountcy cannot be interpreted to mean that Great Britain has the duty of supporting a ruler in denying to his own subjects the very rights which have been established by the authority of Parliament throughout British India. Such an interpretation was authoritatively repudiated in Parliament. In fact the relationship established by the Act between British India and the States may not prove to be absolutely inflexible

With regard to the special powers and responsibilities of the Viceroy, it is stated that as the federal scheme rests not so much on the old system of dyarchy but on the principle of responsible government, the initiative over the whole field of federal government, except in defence and foreign affairs, will pass to the Ministry and gradually to the legislature. Even in the field of defence and foreign affairs there will be no arbitrary division because no Viceroy will wish to certify the military budget. He will inevitably do his best to reach an agreement with his Ministry, for no defence policy can be effective which does not command the loyal co-operation of public opinion and the administrative machine

Stress is also laid on the fact that federation is the only means of combining unity and national self-government with local diversity and autonomy in so vast a country as India. It is of the utmost importance that the whole country should have not only a cultural but a constitutional unity. Its organically integrated character must be maintained, particularly after the creation of self-governing provincial divisions. Otherwise separatist influences will become dominant and the result will be the creation of smaller sovereignties which may be constantly at war with each other

politically and economically, and may reduce the country to chaos

It is further argued that the commercial and industrial development of a sub-continent like India is in many respects prejudiced by the absence of uniformity at present existing in, for example, company law, banking law, law of copyright and trademarks and the like. It is most desirable that there should be established over the whole fiscal field the greatest possible degree of unity and uniformity. In the determination of tariff policies which affect every part of India, Indian States must, in fairness to them, be allowed to have an effective voice.

The Indian critic does not deny the truth of these contentions. In fact, it is too obvious to be disputed. But the acceptance of the theoretical plea for the constitutional unity of India is not equivalent to agreeing that the particular federal structure outlined in the Act of 1935 is not vitiated and deformed in such a way that what is intended to be a remedy will actually be worse than the disease. Indian opinion is not opposed to the federal principle as such but to the specific scheme which was intended to be introduced in the country.

XXV. THE FEDERAL COURT

A SUPREME court is one of the essential components of a federation. Without such a court, no federal constitution can work adequately and smoothly. When different spheres of activity have been demarcated for the Central and Provincial Governments and when specific duties have been allocated to each one of them, a superior tribunal is inevitably required to watch whether the distribution is being properly respected and carried out in practice. If any party feels that it has been wronged, a remedy for getting redress must be provided. The supreme court is intended to entertain all such complaints and, after judicial investigation, to decide how far they are legitimate and genuine. The orders that it issues are final and binding upon all parties. It is a matter of recent history that the Federal Court of the U S A held many provisions of the National Recovery legislation, passed by the American Congress on the initiative of President Roosevelt, to be *ultra vires* of the American Constitution.

The Federal Court has thus a special mission. It stands as the final arbiter in disputes between the federating units, or between them and the Central Government. The verdict that it pronounces is obligatory on all concerned. It is the duty of this court to interpret the language of the constitution whenever it is felt to be ambiguous and vague. It can sit in judgement upon all executive action if it is alleged to be contrary to the provisions of the federal structure. Unlike courts of justice in a unitary state, the Federal Court can question the legality of Acts passed by the central and provincial legislatures in the light of the competence of those bodies to pass them. Controversies about jurisdiction are finally settled by that authority.

The Act of 1935 has provided for the creation of the Federal Court of India. Its constitution and powers have been elaborately prescribed in sections 200-18, and it was constituted on 1 October 1937. It consists of the Chief Justice (now Sir Patrick Spens) and two other puisne judges. Its headquarters are at Delhi though it may meet in other places also.

The Federal Court, according to the Act, is to consist of a Chief Justice and not more than six puisne judges. They are to be appointed by His Majesty and can hold office until they attain the age of sixty-five. A judge is of course free to resign his post and may be removed from office by His Majesty on the ground of misbehaviour or infirmity of mind or body if the Privy Council reports to that effect. The Viceroy

is now empowered to appoint additional judges to this Court for the trial of particular cases.

A person is not qualified to be a judge of the Federal Court unless he (i) has been for at least five years a High Court judge in British India or in a federated State, or (ii) has qualified as a barrister or advocate in Britain and is of at least ten years' standing, or (iii) has been for at least ten years a pleader of a High Court in British India or in a federated State. The Chief Justice must be a barrister or an advocate of at least fifteen years' standing.

The salaries and allowances of the judges are to be prescribed by His Majesty-in-Council and are charged upon the revenues of the Federation. They are now fixed at Rs. 7,000 per month for the Chief Justice and Rs. 5,500 per month for the other judges.

The Federal Court has exclusive original jurisdiction in any dispute between any two or more of the following parties, that is, the Federation, any of the provinces, or any of the federated States, in so far as the dispute involves any question about legal rights.

An appeal will lie to the Federal Court from the judgement of a High Court in British India if the latter certifies that the case involves a substantial question of law as to the interpretation of the Act of 1935 or any Order in Council made thereunder.

The federal legislature may provide by an Act that in certain civil cases where the amount involved in the dispute is not less than Rs. 50,000, an appeal will lie to the Federal Court from the judgement of a High Court in British India. Direct appeals to the Privy Council in such cases may then be abolished.

An appeal may be made to the Privy Council against any judgement of the Federal Court given in the exercise of its original jurisdiction, and in any other case by leave of the Federal Court or of the Privy Council.

The central judicature exerts a very salutary unifying influence on a nation which is composed of autonomous units. It is interesting to refer here to some of the observations made by the Chief Justice of India at the inaugural session of the Court which was held in the Princes' Chamber in New Delhi in December 1937, which briefly outline the nature of the services which this new judicial tribunal is expected to render.

The Chief Justice said that the Federal Court is the first all-India court of law. Like similar courts in other countries it would become at once the crucible in which the flux of current and political thought is tested and refined, and the anvil on which the more stable and permanent elements of it are hammered into shape, to take their place in that armoury of ideas

with which each generation seeks to solve its own problems. Independent of Governments and parties, the Court's primary duty is to interpret the constitution. It would be its endeavour to look at the constitution, not with the cold eyes of the anatomist, but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development. Its canons of interpretation would not hamper the free evolution of those constitutional changes for which the Law provided no sanction, but in which the political genius of a people can find its most fruitful expression.

XXVI. FEDERAL FINANCE UNDER THE 'ACT OF 1935

THE history of centralized finance in India up to 1870, the **Change from** growth of decentralization thereafter, and the re-
unitary to forms introduced by the Act of 1919 have been
federal polity explained in earlier chapters¹ It was an evolution towards provincial autonomy, but the change was allowed to take place only in consistence with and within the framework of a unitary polity and government The Act of 1935 has distinctly provided for a federation. Even though the federal scheme is at present held in abeyance, the provinces have actually been made autonomous and self-governing to a considerable extent They have therefore acquired a new independence and have come closer to the status of federal units It is for this reason essential to understand the financial arrangements that have been brought into existence after the Act of 1935

The task of distributing sources of income between the **Difficulty of** centre and the provinces in a federation presents
allocating great difficulties The demands of both are ur-
revenues gent The duties that they are called upon to perform are equally vital and beneficial to the whole nation

For example, the responsibility of defence and foreign relations is entrusted to the Central Government, and its importance to the country cannot be exaggerated It is a very expensive and onerous charge Several matters of internal administration which are common to the whole federal area and which require a uniformity of outlook and action are also managed by the same authority For the efficient discharge of all these obligations the Federal Government must be supplied with adequate funds

On the other hand, the Provincial Governments are directly concerned with subjects like education, sanitation and public health, which bring about the material welfare and progress of the community They have an almost inexhaustible field for the development of social services In fact, the positive benefits of a civilized corporate life, the tangible good of the very institution of government, are realized to a great extent in the provincial sphere The monetary appetite of the provinces will therefore be insatiable

A balanced compromise has to be effected between such conflicting claims, and reasonable satisfaction given to both the parties The body of tax-payers is of course the same, whether

¹ Chapters xix and xx.

the tax-imposing authority is the Federal Government or the province.

Sections 136-49 of Part VII of the Act are devoted to the question of finance. Other sections, dealing with the Reserved subjects in the Federation, Indian railways, the High Commissioner for India, etc., have also a direct bearing on national expenditure because they impose certain financial responsibilities on the federal exchequer. The scheme of the allocation of revenues between the Federation of India and its constituent units as contemplated by the Act is based on the following principles. Revenues derived from items enumerated in the Federal Legislative List will be allocated to the Federation. Revenues derived from items enumerated in the Provincial Legislative List will be allocated to the provinces. There are several items in the Concurrent Legislative List which are capable of yielding income by being taxed, but their position does not seem to have been properly clarified in the Act.

The following are among the sources of revenue found in the Federal Legislative List: customs duties, excise duties on goods manufactured or produced in India, except liquors, opium and narcotic drugs and medicinal toilet preparations containing alcohol, corporation tax; salt, taxes on income other than agricultural income, taxes on capital, duties in respect of succession to property other than agricultural land, stamp duty in respect of bills of exchange, cheques, promissory notes, insurance policies, etc., terminal taxes on goods or passengers carried by railway or air, taxes on railway freights and fares.

Out of this list, duties and taxes on the following items have to be levied and collected by the Federation, but their net proceeds in any financial year must be assigned to the provinces and federated States and distributed among them in accordance with principles which may be formulated by an Act of the federal legislature: succession to property other than agricultural land, federal stamp duties, terminal taxes on goods and passengers carried by railway or air, and taxes on railway fares and freights. The federal legislature has the right to increase any of these duties or taxes by a surcharge for federal purposes, and the whole of the proceeds of the surcharge will go to the Federation.

Duties on salt, federal duties of excise, and export duties have to be levied and collected by the Federation, but if an Act of the federal legislature so provides, a part or the whole of the proceeds must be paid out of the revenues of the Federation to the provinces and federated States. The principles of distribution will be formulated by the federal Act. But at least 50 per cent of the proceeds of the export duty on jute

must be assigned to the provinces or federated States in which jute is grown

A prescribed percentage, which has now been fixed at 50, of **Assignments of** the net proceeds of the taxes on income other than **income-tax** agricultural income is to be assigned to the provinces and the federated States. But the federal legislature may at any time increase the taxes by a surcharge for federal purposes, and the whole proceeds of such a surcharge shall go to the Federation. Similarly, out of the moneys assigned to the provinces and federated States, the Federation may retain certain prescribed sums for prescribed periods. So that in case of financial stringency during the earlier years of the operation of the federal machine the federal revenues will not be depleted by grants made to the provinces and States.

The States will not be subjected to direct taxation by the Federation except in the case of the corporation tax which may be levied after ten years from the inauguration of the Federation. They will also be called upon to pay special surcharges on income-tax in an emergency. The corporation tax may be commuted into a lump contribution.

Special subventions have to be given out of the revenues **Subventions** of the Federation to make up the deficit in the **to deficit** budgets of certain provinces. They have been **provinces** fixed by an Order-in-Council, which was issued in accordance with the recommendations of the Niemeyer Report.¹

The Federation has to pay out of its revenues sums required **Payments to** by the Crown's Representative for the discharge **the Crown's** of his functions in relation to the Indian States. **Representative** In signifying his acceptance of the Instrument of Accession of any State, His Majesty may agree to remit any cash contribution that may be payable by that State. Detailed provisions have been made in this connexion by section 147 of the Act.

The sources of income possessed by the Provincial Governments in the federal constitution have been described at length in Chapter XXXI-III, of this book.

The federal budget will be laid every year before the chambers **The federal** of the federal legislature, and will show separately **budget** estimates of expenditure which are votable by those chambers and those which are non-votable. The latter are described as being charged upon the revenues of the Federation and are beyond the control of the elected representatives of the people. Those amounts will be spent in accordance with the directions given by the Governor-General and his bureaucratic advisers.

¹ See chapter xxxii, §3

The non-votable items as mentioned in section 33 are:
Non-votable Salaries and allowances of the Governor-General,
expenditure Ministers, Counsellors, Financial Adviser, Advocate-General, Chief Commissioners, staff of the Financial Adviser, judges of the Federal Court and the High Courts, debt charges including interest, sinking fund and redemption, expenditure on defence, ecclesiastical affairs, external affairs, tribal areas and excluded areas in the provinces, expense incurred in discharging the functions of the Crown in relation to the States, and in satisfying any decree, judgement or award of a court, any other expenditure declared by the Act or by an Act of the federal legislature to be non-votable Section 247 (4) also prescribes that the salary and allowances of persons appointed to a civil service or civil post by the Secretary of State are charged upon the revenues of the Federation

It has been calculated that all these sums put together would cover over four-fifths of the total expenditure of the Federation The remaining fifth will be submitted to the vote of the legislature in the form of demands for grants But any cut in the demand made by the legislature can be restored by the Governor-General if he feels that it would affect any of his Special Responsibilities

XXVII. INDIAN RAILWAYS AND THE FEDERAL RAILWAY AUTHORITY

§1. IMPORTANCE OF RAILWAYS

RAILWAYS play a very important part in the life of a modern community. They give a powerful impetus to the **Economic, military and cultural benefits** development of industry, trade and commerce and bring about the economic prosperity of a nation. The services rendered by them in times of war are of inestimable value. The facility of cheap and comfortable travel helps to multiply human contacts and to enlarge the human mind and vision. In short, railways are the grand arteries not only of a nation-wide system of Communications, but also of the realm of knowledge, art and culture. Every state is therefore interested in the adequacy and the efficiency of its railway organization.

Unlike most other social utilities, the construction and **Yast capital expenditure** operation of railways involves a vast outlay of capital expenditure. Difficult and costly engineering projects like bridges and tunnels have to be carried out successfully, high-powered engines and other types of machines have to be continuously employed, a large staff of experts and others has to be constantly maintained. All this means great expense. But on the other side, the income earned by railways is also immense. They carry thousands of tons of goods and millions of passengers every year, and their daily gross earnings are counted by lakhs of rupees.

Railways may be owned and managed by a state or by private **Business principles of working necessary** companies incorporated within a state. But in any case the fact cannot be forgotten that, in a capitalistic society, they are in the nature of big business concerns and require to be conducted on sound commercial principles, consistently with the safeguarding of national interests as defined by progressive thinkers. The capital investments made in railways, even when they belong to private shareholders, are a national asset and need to be protected, though no protection can be granted at the cost of social justice and the welfare of the community as a whole.

Whether railway ownership and management vests in the state or in private companies, a twofold objective needs to be achieved. The freshness, elasticity and economic equilibrium of private enterprise have to be preserved, and simultaneously the abuses of private monopoly, unbridled lust of profit and criminal indifference to the public good, have to be effectively prevented.

§2. RAILWAYS IN INDIA

Railway construction was first started in India in 1854 during the Governor-Generalship of Lord Dalhousie, and it has made rapid progress since then. There are at present about 43,000 miles of railway track in the country, and the total amount of capital invested in them amounts to nearly 880 crores of rupees. Most of the work was done by private joint stock companies formed in England with English capital. They received a number of concessions from the Government of India, including a guarantee of interest on the capital spent. That is how the E.I., G.I.P., B.B.&C.I., M & S.M., S.I. and similar other railway companies came into existence. Specific portions of Indian territory were allotted to them for operation.

Originally, the ownership and management of railways were vested in these companies with certain restrictions imposed on them by the Government. When the period of their contract came to an end, many of the companies were purchased by the state in accordance with the terms of the contract, and state ownership thus came to be established over many railways. But state ownership did not mean state management. After the purchase of the railways, the Government entered into fresh agreements with the same companies, entrusting the working of their railway systems to them on certain conditions. These new contracts were terminable at the end of specified periods.

A number of defects were noticed in railway administration and policy during the Great War of 1914-18, and therefore when it was time for the contracts with the E.I.R. and the G.I.P.R. to come to an end, the Government appointed a committee under the presidency of Sir William Acworth to investigate the whole question and to make recommendations for reform. Two momentous changes were introduced as a result of the committee's report. In the case of the companies with whom the contracts were expiring, the state took the management into their own hands and to that extent the old method of company management was abolished. Secondly, the railway budget was separated from the general budget of the Government of India and a fixed contribution began to be taken from the railways towards the general revenues of the country.

The Indian people have been very critical about the railway policy pursued by the Government. No special effort was made to attract Indian capital and to employ Indian talent in their construction and working. On the contrary, generous concessions were granted to the foreign companies which were formed for the purpose of constructing and operating them. The guarantee of interest

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on the capital invested was bound to encourage not economy but extravagance. The capital expenditure of hundreds of crores of rupees was not so organized and incurred as to lead to the growth of big industries in India. In fact, the Indian railways were often accused of injuring Indian industries by quoting unfavourable tariff rates for the carriage of their produce. Indians were excluded from the higher branches of railway service, and the conditions of travelling for third class passengers, who form the majority of the Indian people and who contribute the major portion of the railway income, were intolerable.

Management of railways by the state was expected to go a long way towards removing most of these evils. **Advantage of state management** The private shareholders' companies incorporated in a foreign country were beyond the criticism and control of the Indian people. But even a bureaucratic Government could be reached and indirectly influenced by non-official members of the Indian legislature. In a fully self-governing India, railway policy and administration will be determined by the Indian people acting through their elected legislatures and responsible Ministers. No outside interference will then be permissible.

At present the railway department is in charge of the Member for Communications in the Central Executive **The Railway Board** Council. Below him there is the Railway Board consisting of the Chief Commissioner, the Financial Commissioner and one member, with directors, deputy-directors and secretaries under them. The railway budget is presented separately by the Communications Member to the central legislature, which can discuss it generally and vote a part of its grants. The Railway Board was the executive creation of the Government of India for the convenience of administration and was not the result of any Parliamentary statute. Its composition and duties can be varied without reference to Parliament and even its existence can be brought to an end by the orders of the Government of India with the sanction of the Secretary of State.

§3 CHANGES PROPOSED BY THE ACT OF 1935

The proposed transfer of political power into the hands of Indians raised the question of control over **Statutory railway authority** railways. Large amounts of British capital have been invested in them and Parliament did not want to jeopardize this capital even remotely by any constitutional changes that may be introduced in India. The matter was considered by a sub-committee appointed by the Secretary of State in 1933 and also by the Joint Parliamentary Committee, and it was recommended that the actual control of the administration of Indian railways should be placed in the hands of a

Statutory Railway Authority which would be free from political interference. Accordingly, Part VIII of the Act, sections 181-99, and the Eighth Schedule have been devoted to the subject of railways.

It is laid down that the executive authority of the Federation of India in respect of the regulation and construction, maintenance and operation of railways shall be exercised by the Federal Railway Authority. It will be a corporate body and will consist of seven persons to be appointed by the Governor-General. Of these not less than three are to be appointed by him in his discretion and the rest presumably on the advice of his Ministers. From among the members a President of the Authority is to be appointed by the Governor-General in his discretion.

No person will be qualified to be a member of the Authority unless he has had experience in commerce, industry, agriculture, finance or administration or (b) if he is, or within the twelve months last preceding has been, (i) a member of the federal or any provincial legislature or (ii) in the service of the Crown in India or (iii) a railway official in India. The tenure of a member is to be five years and he will be eligible for reappointment for a further term not exceeding five years. The Governor-General exercising his individual judgement may terminate the appointment of any member if he is found unable or unfit to perform his duties. The salary and allowances are to be determined by the Governor-General in his individual judgement.

At the head of the executive staff of the Authority there will be a Chief Railway Commissioner appointed by the Governor-General exercising his individual judgement after consultation with the Authority. He will be a man with experience of railway administration. He will be assisted by a Financial Commissioner appointed by the Governor-General and by such additional commissioners as the Authority on the recommendation of the Chief Commissioner may appoint. The Chief Commissioner and Financial Commissioner will have the right to any meeting of the Authority.

The Authority in discharging their functions will have to act on business principles, due regard being paid to the interests of agriculture, industry, commerce and the general public. On all questions of policy they will be guided by instructions given to them by the Federal Government. If any dispute arises as to whether a question is or is not a question of policy the decision of the Governor-General in his discretion will be final. He may also issue to the Authority such directions as he may deem necessary in respect of matters involving any of his Special Responsibilities or in regard to which he is required to act in his

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discretion or in his individual judgement The Authority must give effect to such directions.

The Governor-General exercising his individual judgement, but after consultation with the Authority, may make rules for the transaction of business arising out of the relations between the Federal Government and the Authority. They shall include provisions requiring the Authority to transmit to the Federal Government all such information as may be specified in the rules and to bring to the notice of the Governor-General any matter which involves or is likely to involve any Special Responsibility vested in him.

The Authority is required to establish, maintain and control a fund to be known as the Railway Fund, and all moneys received by the Authority whether on revenue account or on capital account from any source have to be paid into that Fund All expenditure, whether on revenue account or on capital account, required for the discharge of their functions has to be defrayed out of the Fund Any surpluses on revenue account have to be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government

The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connexion with any dispute as to rates or traffic facilities between the public and the Authority A Bill or amendment for regulating the rates or fares to be charged on any railway can be introduced in any chamber of the legislature only on the recommendation of the Governor-General

There will be a Railway Tribunal consisting of a President and two other persons selected by the Governor-General in his discretion They will be men of railway, administrative or business experience The President will be a judge of the Federal Court and will hold office for a period of not less than five years as may be specified in the appointment It will be the duty of the Tribunal to exercise such jurisdiction as is conferred on it by the Act, and an appeal from its decision will lie to the Federal Court on a question of law

It will be seen from this brief account of the constitution and functions of the Federal Railway Authority that a special arrangement has been proposed for the administration of Indian railways after the inauguration of the Federation and the introduction of partial responsibility They will not be a Reserved subject in charge of the Governor-General and outside the competence of the legislature But they will not be in charge of a responsible Minister either

The Authority to which their management is entrusted will be dominated by the Governor-General acting in his discretion in many ways. And no change can be brought about in its constitution and function except with the sanction of Parliament because it will mean an amendment of the Act of 1935. Thus Parliament's direct control is established over the nature of the machinery which manages the railways of India.

PART V

THE PROVINCIAL GOVERNMENT

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XXVIII. THE GROWTH AND FORMATION OF PROVINCES

§1. THE EARLIER SETTLEMENTS AND THEIR OFFICIALS

THE evolution of a mighty and extensive empire from small and unostentatious beginnings is the dominant note in the pages of Indian history for three-quarters of the century following the battle of Plassey. In the moral, material and intellectual exhaustion which seems to have prostrated the vitality of India, province after province capitulated before the might of the foreigner. The last gasp of the dying nation was breathed in 1857 when a desperate though feeble attempt to regain what was lost ended in total collapse.

The conquest of India by the British race was at once a continuous and a sporadic process. **The nature of the Indian Conquest** lay in the idea, the absence of symmetry and system was due to the varied and unequal nature of the opposition which was offered to the conqueror and which had to be overcome before the conqueror's authority was established. There are well-marked periods during which the work of expansion was carried out. Periods of incessant and aggressive activity always alternate with periods of comparative stagnation and quiet. Such spells of inaction, indeed, seem to have curiously combined in themselves the elements of both cause and effect, the latter, so far as relaxation, naturally follows an era of feverish energy, and the former, in so far as an undisturbed spell of peace, acts as a restorative and invigorates the tendency to action.

Beginning with Bengal, which practically became a British possession after the grant of the Diwani in 1765, **Work of a century** the power of England had spread practically to the whole of India by 1857. Bengal and the Carnatic were being simultaneously acquired during the time of Lord Clive. With the fall of Tipu Sultan and the decline and fall of the Maratha power in 1818 the whole of south India, and almost the whole of central India bordering on its eastern side the British possession of Bihar, that is almost the whole of the land with the exception of two areas on the western borderland, came under the suzerainty of the new masters. Sind followed in 1839, the Punjab came next in 1852, and finally in 1857 came the defeat of the forlorn endeavour of desperate impotence. The history of this chequered period is filled by the glamour of the exploits of a Clive, of a Wellesley, a Hastings, and a Dalhousie, as also by the restraining influence of a Shore, a Minto or a Bentinck. The larger and longer the conquest,

the more complicated and responsible became the task of preserving in good order the huge and incongruous acquisition.

Originally, settlements of the East India Company were **Governors of factories** established in the three coastal towns of Bombay, Madras and Calcutta, and so long as the Company's business was strictly commercial, it was not necessary to appoint any important political officer for the administration of the factories. The first mention of the power of appointing Governors and other high officers over their fortresses is made in the Charter that was granted in 1661 during the reign of Charles II. The Governor, along with a few senior servants of the Company, formed what was known as the Council. The President of the Council and the Governor were one and the same person. Madras, Bengal and Bombay each had its own Governor and Council and each ultimately came to be known as a Presidency, as being the jurisdiction of the President-in-Council. There was no authority on the spot in India which was superior to all the three or to any one of them. Their powers and status were co-ordinate. All of them were controlled directly from England by the East India Company.

It is clear that the chief business of the officials in India **Early officials were purely commercial** was to negotiate for special privileges and concessions for their trade, to safeguard the interests of their merchants and traders and actually to supervise their commercial transactions. They had no political mission. Sometimes, indeed, their help was sought by the reigning monarch for the suppression of his enemies, sometimes they came into conflict with the reigning monarchs over questions of disputed privileges which the Company claimed but which the monarch declined to recognize. On the whole, however, till the death of Aurangzeb in 1707, the East India Company's officers were almost entirely officers in a business concern. Their field of activity was limited to the area of the seaports. They had political power or jurisdiction only over their own servants and only to the extent that was essential for conducting the affairs of the factory. Thus the Governor and Council of each factory were empowered to judge their servants and subjects in all causes. They were also given power to declare war or peace with any 'heathen' nation in Asia or America, or to declare martial law in their factories. The Governor was to exercise all powers of a Captain-General of the army. In short, the Governor-in-Council was vested with those administrative powers which were necessary to maintain the existence and activity of the Company.

With the gradual transformation of the Company from a commercial into a political body, the nature of the duties of the Governor and his Council, as also the extent and character of their jurisdiction and power, necessarily underwent a change.

The acceptance of the Diwani after a complete victory in the battle of Buxar practically meant the acceptance of sovereign responsibility for the provinces of Bengal, Bihar and Orissa. British authority had also in the meantime been established over the southern province of the Carnatic. After 1757 and till the passing of the Regulating Act in 1774, the Governors and the Councils of the three Presidencies had to watch with vigilance the ruffled course of politics in their respective spheres and to guard against any onslaught upon the supremacy that they had newly acquired in north and south India.

In these early days, the Governors of the three presidencies were all independent of each other. There was no authority in India which could control any or all of them. And therefore every Governor looked to orders from his superiors abroad, who were separated from the actual scene of operations by a distance of 6,000 miles. So long as the Company's business was purely commercial and so long as no further political or military complications were introduced, the Governor's duties were comparatively simple and did not involve any very great risks, either financial or political. Control from distant England did not prove inadequate. The keeping of regular standing armies, the fighting of regular battles, negotiations of treaties of peace, were no parts of the business of trade. No centralized authority, therefore, was necessary.

§2 AFTER THE REGULATING ACT

The establishment of territorial sovereignty over a vast area, with all the responsibility of governance that it involved, urgently necessitated a reorganization of the whole system of the Company's Indian management. Unity of command and control throughout the Company's dominions in India, and uniformity of guidance, were found indispensable for proper governance and safety. The independence of the Governors, and the capricious originality in design and action which every one of them might enthusiastically try to show, were not calculated to benefit the administration. The system was found to be mischievous. Madras or Bombay might not prove susceptible to the demands and difficulties of distant Bengal, and the unseemly spectacle might be witnessed of distant provinces assuming an attitude of culpable indifference when another, distant province was in danger. Considerations of this kind dictated the change that was introduced by the Regulating Act in 1773, amongst the many others that were also inaugurated by it.

One of the clauses of this Act clearly laid down that the

Governor of Bengal was to be supreme over the other **The Regulat- Governors.** In war and peace and also in other **ing Act** important administrative matters the minor Governors were enjoined to obey the Governor-General-of-Bengal-in-Council. The title of Governor-General was given to the Governor of Bengal. The fact that he was designated Governor-General of Bengal and not of India is indicative of the absence of any ambition on the part of the Company's proprietors to include the whole length and breadth of India under their supreme control. The office of Governor-General was a new creation but the person who filled the office was not new. The Governor of Bengal himself became the Governor-General. The duties of the two offices were combined in one person. Direct executive responsibility for the province of Bengal proper was not separated from the duties of the Governor-General. Thus one and the same person was required to perform extremely complicated and heavy duties, disposal of local problems and imperial dictation being both left to him.

With the creation of the office of Governor-General and the **Centralization** definite declaration of the supremacy of Bengal over the other Presidencies, the Governors of the latter were automatically reduced in status and were thrown comparatively into the background. They were no longer independent. Indeed, as has already been described, this reduction in status and loss of power was not easily digested by the provincial Governors immediately after the passing of the Regulating Act. They defied the relevant clause of the Act and took certain steps on their own initiative without even consulting their newly created head, and put him at times into embarrassing situations. Such insubordination, however, could only be temporary. Masterful personalities at the head did not brook their defiance and matters were soon settled as they were intended to be settled by the Act.

Pitt's India Act of 1784 once more emphasized the control **Pitt's of the Governor-General-in-Council over the other**
India Act presidencies. In fact, this control was enlarged so as to include clearly all matters connected with war, peace, revenues, the army, etc. This measure also laid down that each presidency was to have a Governor and three Councillors including the Commander-in-Chief. The Governors and the Councillors were to be appointed by the Court of Directors and could only be removed either by the Crown or by the Directors. From this time onwards, therefore, each presidency had a form of government analogous to that of the Central Government. There was a person at the head who was assisted by a few councillors. The Governor-General-in-Council exercised powers of superintendence and general control in all important matters concerning the provinces.

The Charter of 1793 extended to the Governors of Madras and Bombay the power of overriding their Councils in case of a difference of opinion between them and their Councils, and when they felt that the peace, safety or good government in the province would be endangered by the attitude taken by their Councils. Such a power had already been conceded to the Governor-General when Lord Cornwallis, wiser by the experience of Warren Hastings, specially stipulated for it in 1786. It was thought better to concede a similar extraordinary power to provincial heads also, to enable them to discharge their duties properly. The Governor's extraordinary veto against the Executive Council thus dates from the year 1793.

In 1807 the Governors and Councils of Madras and Bombay were given the same power of issuing regulations that had been enjoyed by the Governor-General-in-Council since the Regulating Act. The Provincial Government did not need henceforth always to depend upon the Central Government in order to get any legislative measure, beneficial for the province, placed on the statute book. The Charter of 1813 gave to the Provincial Governments the power of taxation. The power had many limitations, but even then its deliberate grant was significant, as showing the Central Government's appreciation of the importance of Provincial Governments and the necessity and desirability of granting them freedom generally in local affairs.

The Charter Act of 1833 tended in the direction of centralization. It expressly declared that the Governor-General of Bengal should be henceforth designated the Governor-General of India. The old designation had become an anachronism after the political events and military conquests which took place subsequent to the passing of the Regulating Act. This Act also deprived the Provincial Governments of any right of law-making. That power was exclusively vested in the Governor-General-in-Council. The Provincial Governments had merely to submit drafts if they wished any law to be passed for themselves. The appointment of a special Law Member to the Governor-General's Executive Council and the need for a comprehensive consolidation and codification of the existing law were responsible for this restriction imposed upon the Provincial Governments. Already there were five different bodies of law in operation in India, and it was thought better to secure uniformity by preventing Provincial Governments from having their own codes.

This Act also proposed to divide the overgrown Presidency of Bengal into two provinces, one with headquarters at Fort William and the other at Agra. This step had been long overdue, thanks to the unplanned and spasmodic manner in which provinces were formed in India. Every piece of territory that was acquired after the Diwan and that was contiguous to the

possessions obtained under the arrangements of the Diwani was simply added on to them. The shortsightedness of this method of allocation of new acquisition will be clear when it is understood that in 1833, when the Charter Act was being passed, the Presidency of Bengal included in its territorial and political jurisdiction the present provinces of Bengal, Bihar, Orissa, and Assam and a large portion of territory now included in the United Provinces including Benares and Agra. It was physically impossible for one man to be an active and efficient day-to-day administrator of this vast tract, to supervise its affairs and at the same time to bear the responsibility of formulating a comprehensive imperial policy and of superintending provincial administrations. The Charter Act proposed to reduce this unbearable burden and make matters more convenient by dividing the whole tract into two provinces to be governed by separate Governors. But the arrangement never worked out in practice and this clause of the Act remained a dead letter.

However, the Governor-General was empowered in 1836 to create a Lieutenant-Governorship for the North-Western Provinces. This province was rechristened the United Provinces of Agra and Oudh in 1902, and is still known by that name. The appointment of a Lieutenant-Governor relieved the great pressure of work upon the Governor-General.

The Charter Act of 1853 authorized the appointment of a separate Governor of Bengal, and till he was appointed it authorized the Directors and the Board to nominate a Lieutenant-Governor for the province. Such a Lieutenant-Governor was appointed in 1854, the appointment of a Governor being postponed till the year 1912. The Governor-General of India was relieved of direct executive responsibility for the administration of any province and could now devote his undivided attention to fulfilling his duties as a supervising and controlling central power. The Charter also gave authority to the Directors either to constitute one new province with a Governor and Council, or to appoint a Lieutenant-Governor. Accordingly a Lieutenant-Governor for the Punjab was created in 1859. No new Governor was appointed.

Oudh, which was annexed in 1856 and put under the authority of a Chief Commissioner, was merged in the North-Western Provinces in 1877.

By an Act of 1854 the Governor-General-in-Council, with the sanction of the Directors and the Board, could take by proclamation under his immediate authority and management any part of the territories in possession of the Company and then give orders for its administration. The mode in which this

**Appointment
of Lieutenant-
Governors
and Chief
Commissioners**

**The N.-W.
Province
or U.P.**

**Bengal and
the Punjab**

**The C.P.,
Burma, Assam
and N.-W.F.
Province**

power was used was by the appointment of Chief Commissioners to whom the Governor-General delegated the necessary powers. Chief Commissioners were accordingly appointed for the Central Provinces in 1861 and Lower Burma in 1862. Berar, taken over from the Nizam in 1903, was linked with the Central Provinces. On the conquest of Upper Burma and on its addition to the province of Lower Burma in 1886, a Lieutenant-Governor was appointed as administrator in place of the old Chief Commissioner. Assam had been annexed to Bengal in 1826 and was formed into a separate Chief Commissionership in 1874. In the partition of Bengal in 1905, Assam, together with the eastern half of Bengal, was converted into one Lieutenant-Governorship. When the partition was annulled in 1912, Assam once more became a Chief Commissionership. The North-West Frontier Province was formed in 1901 by detaching the frontier districts from the Punjab. Delhi was created a separate province under a Chief Commissioner when it was made the capital in 1911.

The Government of India were empowered by the Act of 1854 to define the limits of the various provinces. The Act further expressly vested in the Governor-General-in-Council all residuary authority not given to the local Governments. The additions to the British territory made by Lord Dalhousie and the urgent necessity of splitting up the tremendously overgrown province of Bengal at last goaded the home authorities to take steps which would authorize the formation of new provinces and help in the systematization of their management.

§3 TYPES OF PROVINCES

Henceforth three different types of provinces are visible.

Three types of provinces The first type included the old presidencies or Governor's provinces, the second included provinces under Lieutenant-Governors and the third those under Chief Commissioners. The first type naturally enjoyed a higher status as they were the more ancient and enjoyed special privileges. After the abolition of the East India Company, the power of appointing Governors of the presidencies was vested in His Majesty acting on the advice of the Secretary of State. The Lieutenant-Governors and Chief Commissioners were appointed on the recommendation of the Governor-General. The Governors had also privilege of being in direct correspondence with the Secretary of State, it being only necessary for them to send copies of such communications to the Governor-General. Lieutenant-Governors and Chief Commissioners on the other hand had a comparatively lower status, particularly the Chief Commissioners, who were mere delegates of the Governor-General in respect of the necessary powers of administration that were granted to them. One more distinction has to be

noted. The Governors' provinces necessarily possessed Executive Councils. It was not so with either Lieutenant-Governors' or Chief Commissioners' provinces.

The Reforms Act of 1919 entirely did away with this distinction and all provinces were declared to be Governors' provinces. However, the old difference in the authority which made the appointments remained. Governors of the three old presidencies continued as before to be nominated from England on the advice of the Secretary of State. They were persons outside the Indian Civil Service and had often been prominent party leaders or Parliamentarians. They had naturally a higher status. All the other Governors were nominated on the recommendation of the Governor-General and were usually men who had put in a successful and long period of service in India. These were prize posts for the ambitious and capable members of the bureaucracy and they were generally left in the gift of the chief authority on the spot, namely the Governor-General. Such provinces could not have, therefore, the status of the old presidencies. The Act of 1858 expressly gave the Governor-General the right of appointing Lieutenant-Governors.

Another distinction in the provinces was introduced when the practice was initiated of administering newly conquered territories like Assam, the Punjab, Saugor, etc., not under the laws and regulations in force in the old provinces like Bengal and Bihar, but under instructions issued by the Governor-General-in-Council. Such provinces came to be known as Non-Regulation Provinces as distinguished from the old Regulation Provinces of Madras, Bengal and Bombay. In the Non-Regulation Provinces great discretion was allowed to officers, and the administration was conducted in accordance with simpler codes, modified to suit the circumstances of each special case. However, in course of time, the distinction practically disappeared and was almost non-existent at the time of the introduction of the Montford Reforms, except for some difference in the titles of officers. In the Non-Regulation Provinces, for instance, the Collector was designated the Deputy-Commissioner and the Deputy-Collector was known as the Extra Assistant Commissioner. After the Montford Reforms, all provinces were raised to the dignity of Governors' provinces and therefore the distinction disappeared.

§4 DEMAND FOR A REARRANGEMENT OF THE PROVINCES

The fundamental fact must be borne in mind that nearly a century was required to achieve the conquest of the whole of India. As a consequence, that symmetry of arrangement and

Unplanned formation of Provinces naturalness of division which might be expected to follow from a unified conception are conspicuous by their absence in the policy that was evolved during a period of successive war and peace. To take an instance from everyday life, it was not as if an extensive and open piece of ground was systematically developed, and a mansion, planned with careful attention to all detail, was erected upon it. It was on the other hand like the purchase of one site first and the gradual acquisition of adjoining sites afterwards. Officials of the East India Company who were called upon to form political subdivisions of the country during the period and process of conquest could not have the perspective of a whole British Indian Dominion, because it had not become a reality then.

Proper principles in the formation of provinces It is obvious that a continent like India is too big, diversified and unwieldy to be treated as one single and coherent unit for the purpose of administration. It had to be divided into various provinces, in order to ensure a clear division and demarcation of responsibility and to avoid confusion in management. There are certain well-recognized principles on which the formation of such provincial subdivisions ought to be based. Under normal conditions and given a fairly numerous population, a common language, common historical affinities, common customs and traditions, common modes of life and thought and a common territory are regarded as natural lines of demarcation and division. They would represent distinct entities, each one of which is unified by strong internal ties. It must be remembered that for centuries together the larger Indian nation has been composed of small but different nationalities, each confined mainly to a particular part of the country. Political divisions could very appropriately follow these linguistic and cultural divisions.

Indian provinces not homogeneous No such deliberate principle of division underlies the formation of provinces in India. The basis of division is not ethnological, linguistic or cultural. The one factor that influenced and necessitated the division was administrative convenience. And hence some of the Indian provinces have become heterogeneous conglomerations with a great variety of languages and society. The Bombay Presidency, which consisted of four or five distinct cultural groups, Sind, Kathiawar, Gujarat, Maharashtra and the Karnatak, is a case in point. Sind, which was conquered in 1839—that is, before the conquest of the Punjab—could not be given independent status, and therefore it was merely attached to the British province geographically nearest to it, to Bombay. Many of the provinces were carved out of new acquisitions, and administrative convenience being the sole underlying aim of the division, the spectacle of homogeneous units being split

up into divisions and their solidarity destroyed by their inclusion in two different provinces is not uncommon. The Karnatak, Maharashtra and Berar are pertinent instances. Some of the Indian provinces are therefore mere patchwork, mere congregations of different groups which among themselves have not that affinity which results from common characteristics and common development.

This spasmodic and irrational method of the formation of provinces has had an interesting sequel. There is now arisen in many parts of the country considerable agitation for a rearrangement of provincial boundaries on more rational and equitable lines. The growth of education has produced a selfconsciousness in this as in all other spheres of public life. People who are closely united by ties of a common race, a common language and a common culture, find themselves split into ineffective political fragments. They feel that their material and intellectual progress is unnecessarily hampered as the result of such a dissipation of their collective strength.

Several homogeneous groups have therefore protested against their political dismemberment by the Government of India and have demanded that they should be restored to their natural unity. Unfortunately, communal ambitions and wranglings were greatly in evidence even in this question, when the separation of Sind was discussed. The Act of 1935 has recognized the claims of Sind and Orissa to provincial independence and accordingly these two names have been added to the list of Governors' provinces. It would not be surprising if a few more are added in the course of the next few years by the splitting up of glaringly heterogeneous areas.

A brief reference must be made here to the other side of this important subject. The creation of new provinces has been deprecated by some eminent critics on financial as well as national grounds. It is held to be a costly luxury. If the provincial area is small, it cannot be self-sufficient in the matter of its income and expenditure. Its administrative machinery may also prove to be inadequate to meet all the various needs of social uplift according to modern standards. Such lean provinces will then become a burden upon the Federation which will have to help them with subventions in order that their budgets should be balanced. It has been decided, for instance, that Sind and Orissa should be given annually about a crore and half a crore of rupees respectively by the Central Government to enable them to make up their deficits.

It is also pointed out that the present incongruous formation of provinces has its own advantages in a larger national

sense. It brings together under one administrative system several of the smaller nationalities of which India is made. They get an opportunity to work together and to understand each other. Such contact between diverse populations is to be desired, as it helps in rounding off the angularities of a narrow provincialism and inculcates the broader national vision which is so urgently required in India. A cosmopolitan outlook and a capacity for assimilation are at least as essential in the modern world as the strength which comes from innate coherence. A reshuffling of the provincial areas may be undertaken in a spirit of reform and justice, but even then some common meeting ground, some common organization for the different neighbouring units to remain in touch with each other, should be provided.

**Cultivation
of a wider
national
outlook**

XXIX. THE GROWTH OF PROVINCIAL GOVERNMENTS UP TO THE ACT OF 1919

§1 THE PROVINCIAL EXECUTIVE TILL 1919

BEFORE the advent of provincial autonomy in April 1937, the provinces were under a system of administration which was known as dyarchy. It was introduced by the Montagu-Chelmsford Reforms in 1921. Even before that date, of course, every province had a Government existing and functioning in its area. The executive and legislative aspects of the provincial Governments had, in fact, passed through successive stages of development with almost every important legislative measure, from the Regulating Act to the Act of 1919, which was passed by the British Parliament for the Government of India.

Originally, the business affairs of the East India Company in **The Governor** the three trading centres of Madras, Bombay and Calcutta were managed by officers called Presidents, who subsequently came to be designated as Governors. The first mention of the power to appoint Governors is found in the Charter of 1661. Since then, these officers continued to be appointed to administer the important territorial acquisitions of the East India Company. The power of appointing them lay with the Directors. After the abolition of the Company in 1858, they were nominated to hold office on the recommendation of the Secretary of State for India. Lieutenant Governors and Chief Commissioners, to whose emergence a reference has already been made, were appointed on the recommendation of the Governor-General. The Governor was the head of the provincial administration and presided over the Executive Council in the provinces where that Council existed. No important measure could be taken by the Provincial Government without the approval of the Governor.

By Pitt's India Act of 1784, Executive Councils were created **The Executive** for the presidencies of Madras and Bombay. They **Council** were to consist of three members, including the Commander-in-Chief in the province. This number was reduced to two in 1833, but was later on increased to three, and stood at that figure till the introduction of the Montagu Reforms in 1921. After the abolition of the office of separate Commander-in-Chief of the province, his place in the council was taken by an ordinary member.

It must be understood that provinces created after Pitt's India Act did not come under the operation of that clause of the Act which created Executive Councils, because such newly created provinces were given a status lower than the status of a Governors' province. They were placed in charge of either

Lieutenant Governors or Chief Commissioners. Thus, the North-Western Provinces (the modern United Provinces of Agra and Oudh), Assam, the Punjab and the Central Provinces had no Executive Councils till the introduction of the Montford Reforms. The responsibility of their governance devolved upon the heads of those to whom, in constitutional theory, necessary powers were delegated by the Governor-General. The only province which was not a Governor's province and which still had an Executive Council was the province of Bihar and Orissa, which was created after the annulling of the partition of Bengal and the reshuffling of the provincial areas. Senior members of the Indian Civil Service serving in the province were selected to become members of the Executive Council, from the days of the Morley-Minto reforms, one Indian was appointed.

§2 THE PROVINCIAL LEGISLATURE TILL 1919

The origin of the legislative powers of the provinces goes **Up to and** back to the year 1807. By an Act of that year **after 1833** the Governors and councils in Madras and Bombay were given the power of making regulations, a power similar to that which had been granted to the Governor-General-in-Council by the Regulating Act. From that time the regulations issued by the Governments of Madras and Bombay had legal application in their respective jurisdictions until all the existing law was consolidated into a code, for the preparation of which orders were given by the Charter Act of 1833. This Act deprived the Provincial Governments of their independent law-making power. They were now asked merely to submit to the Central Government drafts of whatever legislation they wanted enacted for their areas. The Governor-General-in-Council was declared to be the sole repository of legislative authority.

But the inconvenience of this sort of centralization was **Act of 1853** obvious. The Governor-General's Council, in which members from the Bengal Civil Service predominated, could not be expected to give sufficient attention to the problems of distant provinces like Madras and Bombay. The concentration of legislative business over the vast area comprised by the three existing provinces of Madras, Bombay and Bengal in a single small council was evidently unsatisfactory. The Governments of Bombay and Madras constantly complained that their claims and needs were not properly considered. The Act of 1853 tried to remove the grievance of the provinces to a certain extent. It allowed representatives of each of the four Provincial Governments of Madras, Bombay, Bengal and the North-Western Provinces to hold seats in the Governor-General's Council, which was specially enlarged for the transaction of legislative business by the nomination of additional members.

*A more liberal step was taken by the Indian Councils Act

of 1861, when to the provinces was restored the power of legislation which had been taken away in 1833. The Councils of the Provincial Governments were expanded for legislative purposes by the addition of the Advocate-General *ex officio* and other nominated members, not less than four and not more than eight, at least half of whom were to be non-officials, as in the case of the Council of the Governor-General. In accordance with this privilege, special bodies to transact law-making business were established for Bengal in 1862, for the North-Western Provinces in 1886, for Burma and the Punjab in 1897, for Eastern Bengal and Assam in 1905, on its creation as a separate province after the partition of Bengal by Lord Curzon, and for the Central Provinces in 1913.

The concession and freedom granted to Provincial Governments did not in any degree diminish the sovereignty of the Government of India and the power of their Legislative Council to enact laws for the whole of the country. The Act of 1861 expressly declared the Governor-General's law-making power to extend to all persons and things, excepting certain Parliamentary enactments and the general authority of Parliament and the Crown. However, in practice, the provincial legislatures were competent to enact laws for the peace and good government of the provinces, subject to the restrictions imposed upon them, and subject to the general supervising authority exercised by the Central Government.

This measure was soon found to be inadequate. The growth of political consciousness in the educated classes of the Indian public, which had just passed through a course of western education and had become familiar with the democratic idea that characterized some of the western governments, was a new factor in the situation. This national awakening found organized embodiment in the Indian National Congress, an institution which was established in the eighties of the last century. This body began to hold sessions annually, moving from place to place, and to agitate for the removal of administrative defects and deficiencies. The Congress became the vehicle for the expression of the new-born ambitions and aspirations of an awakening nation. It also became a consolidating force which helped to draw together and co-ordinate the national movements and tendencies in the different provinces.

Agitation conducted by the early Indian politicians, some of whom could be described as the creators of the Indian National Congress, had the result of exposing the inadequacy of the Act of 1861 and its incapacity to enlist popular contentment and support. Hence the proposal for the Indian Councils Act of 1892. The Under-Secretary of State, Mr (the late Lord) Curzon, explained in Parliament that the object of the new proposal was to give 'further opportunities to the non-official and native

element in Indian society to take part in the work of government, and in that way to lend official recognition to that remarkable development both of political interest and political capacity that had been visible among the higher classes of Indian society since the Government of India was taken over by the Crown in 1858'.

This measure recommended the enlargement of the Councils **Act of 1892** by the addition of larger non-official numbers. The method of making the addition, however, gave rise to a considerable amount of difference of opinion. There was great opposition to the democratic principle of direct election being introduced in the then existing political and social condition of India. On the other hand, continuance of the conservative principle of nomination was not calculated to gratify politically-minded Indian citizens. Ultimately a compromise was arrived at by which the reality of election was cloaked under the garb of nomination.

A Regulation made under the Act stated that in the case of corporations like municipalities and Local Boards, or associations like those of a University or a Chamber of Commerce or landholders, it would be convenient and advantageous for the Governor to consult their wishes in the matter of the selection of members to represent them, and to nominate only such men as might be recommended by their confidence.

Thus the principle of election was indirectly initiated. Theoretically, members continued as before to be nominated by the Governments. In practice, however, the discretion of the Government in making the selection of some of the nominated candidates was limited by the recommendations of recognized bodies and associations. Such recommendations could not be normally rejected.

Thus the Act of 1892 introduced a double reform. It enlarged the size of the legislatures, the number of additional members to be nominated for legislative purposes being fixed at eight to twenty for Madras and Bombay, not more than twenty for Bengal and not more than fifteen for the United Provinces. It also indirectly inaugurated the principle of election in the formation of these bodies.

This measure extended the powers wielded by the legislatures. For the first time, they were allowed the right, subject to certain restrictions, of asking questions bearing upon actions of the Executive Government. They were also given the power of discussing the annual financial statement presented by the Finance Member and making a general criticism of the policy adopted by the officials of the bureaucracy. This was an advance over the earlier measure of 1861 which had confined the legislatures to strictly legislative business.

Events, however, were moving fast in India. The Act of 1892 could not cope with rapidly changing conditions in Indian

politics. The wider spread of western education only helped **Morley-Minto** to intensify the national agitation, which **Reforms, 1909** was vigorously conducted during the first decade of the twentieth century. Indian political life passed through various interesting phases and vicissitudes which are yet fresh in the memories of living men. The installation of the Liberal Ministry in power in England, after an almost complete ostracism of two decades roused some hopes for the successful termination of the great struggle that had been conducted by politicians in India on the question of Indian administrative reform. The acceptance by Lord Morley of the post of Secretary for India was regarded as a further significant event. In collaboration with Lord Minto, the Governor-General, he prepared a scheme and laid it before Parliament for its sanction, which was duly given.

The Morley-Minto Reforms made important modifications **Larger** in the composition and functions of the provincial **Councils** legislatures. In the first place, the total number of members of each of the provincial Councils was considerably increased, the new figure in some cases being more than double that of 1892. The maximum limit of fifty additional members was fixed for the larger provinces and of thirty for the smaller ones. Secondly, the proportion of official to non-official members was modified so as to bring about a majority of non-official members in the provincial Councils.

The difference in the two situations is clear. Official members have to vote as they are asked to vote officially. They do not have to exercise their individual judgement, but must act according to the mandate they receive from above. With nominated non-officials, the case is different. In theory, at least, they may vote as they please, on the merits of the question. Their opinion is taken to be more indicative of the popular view than that of officials.

It must be understood that a non-official majority does not necessarily mean an elected majority. The non-officials may be members nominated by the Government from among persons who are not in the Services. It has already been seen how, under the Act of 1861, all non-official members were nominated and how, under the Act of 1892, the principle of election was indirectly introduced, particularly in the provincial legislatures.

The Act of 1909 openly accepted that principle as one of the fundamentals of the Reforms scheme. However, election was not to be direct. It was also proposed to give separate representation to the important community of the Mohammedans. The constituencies for the provincial Councils were formed out of municipalities and District Boards giving their votes in groups.

These changes in the constitution and composition of the provincial Councils were accompanied by an enlargement of their functions and powers. The right to hold a general discus-

tion of the budget, which had been ~~conceded~~ in 1892, was further augmented by the right to move **Their functions increased** resolutions in a definite form upon matters pertaining to the budget, and to divide the Council on them. The power of expressing opinion in the form of a definite resolution was not confined to matters connected with the budget, but was extended to all questions of general public importance. Certain subjects were of course excluded, for example the army, foreign relations and other cognate matters were not subjects on which resolutions could be moved. The Governor's permission was necessary for the introduction of a resolution. The right had thus various limitations imposed upon it. Lastly, the power of asking questions, which had been conceded by the Act of 1892, was increased by allowing the member who originally put the question to put further supplementary questions if he was dissatisfied with the reply given by the Government member. Thus the functions and privileges of the legislatures were to a certain extent increased.

The Act of 1909 did not even suggest the introduction of **No introduction of responsibility** responsibility. Lord Morley, while making a speech in Parliament, distinctly disclaimed any intention on his part or on the part of His Majesty's Government to treat the reform measures as the beginning of the development of self-governing institutions. The newly created legislatures were neither representative nor democratic in the wider sense: their constitution did not accord with a popular form of administration, their powers were limited, they had not any effective control over the executive, and their existence and proceedings had an air of unreality in the absence of any greater power than that of vehement criticism of some Government measures. Such a defective scheme could not satisfy the aspirations of the people for Swaraj, a word which was used by the President of the National Congress, Dadabhai Naoroji, in 1906 to describe the only remedy that he could discover for the solution of the Indian political problem.

The constitutional status of the provinces in their relation to the Governor-General-in-Council till the introduction of the Montford Reforms has been already explained.¹ **Their constitutional status** The Government of India was emphatically a unitary government, with undivided responsibility and authority for the peace, order and good government for the whole land. Under such a centralized arrangement the provincial legislatures could not enjoy any independence. They had only a limited power and scope for operation, and even in the field that was supposed to have been left unfettered for their legislative competence many restraints were imposed on their freedom of action and judgement. A greater and more

¹ Chapter xix.

genuine grant of independence and initiative to the Provincial Governments and their legislatures had to precede any scheme of reforms which proposed the introduction of even partial responsibility in the provincial sphere

XXX. DYARCHY AND ITS WORKING 1921-37

§1 THE GENESIS OF THE SCHEME

THE final goal of British policy in India, as visualized by **The goal of British Parliament**, was enunciated in the **British policy** Announcement of 20 August 1917. It was described in **India** as the progressive realization of responsible government and the gradual development of Parliamentary institutions. The Act of 1919 was intended to be the first important step in implementing that promise. Parliament tried to find a way out of two impossible and unacceptable situations. On the one hand, it was pledged not to permit the Indian constitutional structure to remain entirely bureaucratic and uncontrolled by the Indian people as in pre-War days. On the other hand, it was determined not to allow the Indian polity to be suddenly transformed into a full-fledged democracy by one decisive stroke.

Any scheme of reform which is based on this hypothesis would be essentially a compromise between the **Gradual transfer of power** bureaucratic and the democratic principles. It would not bring about a total disappearance of an irresponsible and an irremovable executive from the Indian scene. The conduct of a large part of Indian administration would continue to be vested in officials who are directly answerable only to the Crown and Parliament of Britain. The transfer of political power to India would not be complete but partial, and also subject to the superior control of the Governor-General. The dyarchical plan introduced by the Act of 1919 can be properly understood only when it is related to this fundamental assumption.

That plan was based on the following cardinal points. In the first place, even though the unitary form of the Indian state was maintained, the spheres of the Central and Provincial Governments were clearly demarcated and separated from each other. They were recognized as two distinct entities, each having its own specific responsibility. Secondly, the control of the Central Government was considerably relaxed, though it was not completely abandoned. The provincial authorities were given a good deal of freedom in the management of their own affairs. Thirdly, the provinces, which thus acquired a status of administrative independence, were made the centre of a new political experiment. The first instalment of self-government which was promised by Parliament was initiated in the provincial domain.

It is necessary to grasp the two principal elements which shape the mechanism of responsible government. Firstly, under

this system, the executive is completely subordinate to the legislature. It is brought into office and maintained in authority only as long as it retains the confidence of the legislature. An adverse vote of that body results in the resignation of Ministers and in a change of Government. The second important requisite is that the legislature which thus controls the executive should be itself elected on the widest possible franchise. It must be thoroughly representative of popular opinion and must reflect the living currents of the larger social life. The popular will is broadly expressed in the legislature and the machinery of government is conducted in the light of its mandate and direction.

The Act of 1919 contemplated a gradual evolution towards, and not an immediate establishment of, full provincial autonomy. It therefore devised a peculiar method of governance to suit the period of transition. That method is known as Dyarchy. The term was new in political usage if not in coinage. The scheme was actually inaugurated in the beginning of 1921 and worked thereafter for over sixteen years till 1 April 1937. On that date it was superseded by the Government of India Act of 1935, which was put into operation nearly two years after it had been passed by Parliament.

§2 TWO DIVISIONS OF THE PROVINCIAL GOVERNMENT

The system of dyarchy as it operated in the Indian provinces was based on one dominant principle: the division of government into two sections. One of them was wholly bureaucratic and the other was popular to a great extent. The former, which was known as the Reserved section, was managed by an irremovable executive council. The latter, which was called the Transferred section, was given over for management to responsible Ministers. They were elected members of the provincial Legislative Council and answerable to it for their policies and actions. These two sets of officials, having a constitutional status fundamentally different from each other, were harnessed, under the control of the Governor, to carry on the work of administration. They were also associated with, and depended for legislation upon, the same legislature, and had a common budget.

The spheres of Ministers and executive members were intended to be sufficiently distinguished from each other. Each half was held finally responsible and competent to pass any orders within its own sphere. That is to say, Ministers could not interfere in Reserved matters, nor could members interfere in Transferred matters. Mutual friendly consultation might be held between the two halves and such consultation and expression of opinion might

appreciably influence their mutual policies. Legally, however, the complete independence of each of the two spheres was guaranteed by the Act. Any dispute about jurisdiction that might arise between them or any other matter of conflict, was left to be decided by the arbitrament of the Governor, whose decision in such matters was declared to be final.

However, it was discovered that the demarcation of two **Overlapping separate units in the same executive govern- of subjects** ment could not be so precise as to make the two divisions absolutely water-tight. There was considerable entanglement between the subjects of the two halves. Sir K. V. Reddi, a Minister in Madras, said that he was Minister for Agriculture minus Irrigation and minus the administration of the Agricultural Loans Act. Both the majority and the minority reports of the Muddiman Committee discussed this question and both came to the conclusion that a perfect differentiation which entirely avoids any mutual overlapping of Transferred and Reserved subjects is impossible. The opinion was endorsed by the Bombay Government and also by some of the ex-Ministers who had occasion to work out the reforms under the dyarchical plan. The minority emphasized the impossibility of effecting a clear-cut and mutually exclusive division of subjects as an inherent defect which vitiated the whole system of dyarchical government.

Wherever any ambiguity might arise as to the jurisdiction of the Reserved or Transferred half, the sole authority to remove the ambiguity and pronounce the final judgement was the Governor of the province, to whom all such cases had to be referred.

§3 THE PROVINCIAL EXECUTIVE

THE GOVERNOR

(The Governor was the head of the province and played a **His executive dominant part in the working of the provincial powers** government. He was invested with many powers, ordinary and extraordinary. He presided over the Executive Council, held counsel with Ministers, distributed portfolios among Executive Councillors and Ministers, and made rules for the transaction of their business. He was empowered, in exceptional cases, to override the Executive Council. Even in the sphere that was supposed to have been transferred to responsible Ministers, the Governor actively participated in the conduct of business. He was permitted to interfere with ministerial decisions, if necessary.) Complaints were made before the Muddiman Committee that such interference often proved excessive in practice even though the joint Parliamentary Committee had recommended that it should be limited to the strict minimum.

(All laws passed by the provincial legislature required the Governor's assent, and in some cases his previous sanction was required for the very introduction of a Bill. If the legislature did not pass a Bill which was deemed essential by the Governor, he could certify it into an Act in spite of the opposition of the legislature.)

The Governor's position was further strengthened by the peculiarities of the dyarchical plan. The constitutional status of the Reserved and Transferred halves was incongruous. Their composition, outlook and methods of work were greatly different. It was not improbable that instead of moving together with harmony and smoothness they might clash with each other and generate friction in the normal operation of the administrative machine. To the Governor was left the important task of managing matters in such a fashion that conflicts, as far as possible, did not arise at all, and when they arose, were settled in a spirit of friendliness and co-operation. He had to maintain the balance between the two warring elements and save the innovation of dyarchy from being destroyed on the rocks of differences and disputes.

On occasions of complete deadlock at budget meetings, the Governor was authorized to make allotments of funds, in his discretion, to the departments in the two halves. Similarly, if the majority party in the legislature refused to accept office and also prevented others from accepting it by refusing to vote their salaries, the Governor was empowered to take over the Transferred subjects in his own charge and to make arrangements for their administration. The Governors of Bengal and the Central Provinces did make use of this emergency power.

THE EXECUTIVE COUNCIL

After the Montford Reforms, the difference between the status of the different provinces was abolished and all provinces were declared to be Governors' Provinces, with an Executive Council in each to assist the Governor. The North-West Frontier Province and the province of Delhi were originally excepted from this arrangement. But in 1932 the North-West Frontier Province was raised to the status of a Governor's Province and a modified scheme of dyarchy was introduced in it. The Reserved Provincial subjects were entrusted to the care of the Executive Council. This body was not responsible to the provincial legislature and not removable by it.

The number of Executive Councillors varied in the different provinces. The major provinces, that is, the older and larger provinces of Bengal, Madras and Bombay, had Councils each consisting of four members. In

the Presidency of Bombay, however, on account of financial pressure and the imperative need for retrenchment, the number of Executive Councillors was reduced from four to two in 1932. In the remaining provinces the Councils usually consisted of two members.

It was laid down in the Act that one of the Councillors must be a person who at the time of his appointment had been for at least twelve years in the service of the Crown in India. Usually half the number of the total members—one in the minor and two in the major provinces—were selected so as to satisfy this particular clause of the Act. The others were recruited among non-official Indians in pursuance of the policy of the larger association of Indians in the business of government.

It was during the time of the Morley-Minto Reforms that one Indian was admitted into the provincial and the central Executive Councils. This number was increased to two in the major provinces. Members of the Executive Council were technically appointed by His Majesty under the Royal Sign Manual. In practice the Governor exercised considerable influence over their appointment. Their tenure of office was for five years. The Councils worked on the portfolio system.

This part of the Government was entirely responsible to His Majesty's Government through the Secretary of State and the Governor-General. Officials in the Executive Council were not removable by an adverse vote of the legislature. They were answerable for their actions to the two controlling authorities from above and were entirely subordinate to them so far as the maintenance of British interests and good administration were concerned. Their salaries were not dependent on the vote of the legislature, which had no power to dismiss them from office.

However, moneys required for the departments managed by the Executive Council had to be provided by the provincial legislature at its discretion in so far as the votable items of the budget were concerned. All laws pertaining to Reserved subjects had also to be passed by the Legislative Council. Thus, in fact, if not in theory, an attempt had to be made to accommodate the actions of this portion of the provincial executive to the will of the elected representatives of the people.

THE MINISTERS

The other part of the provincial executive was constituted by what are known as Ministers. These officers were newly created by the Montford Reforms in fulfilment of the promise of the gradual introduction of responsible government made in the Announcement of August 1917. They were put in charge of those provincial subjects which were to be made subject to popular control.

and which were called Transferred Ministers were to be responsible to and removable by the legislature. Their salary and the funds required for their departments were voted by the Legislative Council. On an adverse vote of that chamber they had to tender resignation of their office.)

The power of appointing Ministers was vested in the Governor. But he could select only such persons as were elected members of the provincial Legislative Council and as were able to command the confidence of that council. It was therefore obvious that the Governor's choice could not be arbitrary. The persons selected by him to hold the office of Ministers had to have some influence with the legislature. They had to be able to command a not inconsiderable portion of its votes. A well-organized political party, occupying a majority of seats of the Legislative Council, was naturally able to get its own nominees appointed to the ministry by the Governor.

The number of Ministers was not the same in every province. Generally, in the major provinces, it was three and in the minor provinces two. Bombay, Bengal and Madras had three Ministers each. After 1932 the number of Ministers in Bombay was reduced from three to two on account of financial stringency and the need for reducing the expenditure of the Provincial Government.

There could be no fixity of tenure for ministerial office as there was for a member of the Executive Council. Technically speaking, a Minister's term of service may be said to have ended when the Legislative Council itself was dissolved. But if he lost the confidence of that body before the date of its dissolution, he was bound to resign his post immediately. On the other hand, he might be able to retain his office even for a second and third term if the legislative chamber so desired.

The salary of the Ministers was to be voted by the legislature. Originally by the Act of 1919 the same salary was provided for Ministers as was given to members of the Executive Council, but the legislature was empowered to reduce it. The legislature took action in that direction in several provinces. In Bombay, for instance, the salary of the Minister was reduced from Rs. 64,000 per year to Rs. 48,000 by the first Reformed Council.

It must be admitted, however, that the presence of a proportion of thirty per cent of nominated members in the Council—official and non-official—was a solid asset in the hands of the executive. The inevitable assimilation with Government members of representatives of special constituencies—like those of land-holders on account of financial interests or those of communal constituencies (e.g.

Europeans) on account of racial affinity—raised the proportion of thirty per cent much higher

Ministers did, as a matter of fact, prefer to win the favour of this bloc rather than that of a majority of elected members. These latter were divided in their opinions, they represented different currents of thought and it was difficult to bring such heterogeneous elements under one banner. On the other hand, a Minister with a small faithful personal following could be maintained in office in opposition to the wishes of a large number of elected members if he had managed to secure official support. Responsibility to the legislature thus tended to degenerate into subservience to an irremovable executive. The Raja of Panagal is reported to have once declared in the Madras Legislative Council that he was responsible to the Governor and not to the Council at all. And he was the Chief Minister of the Madras Government for two terms in succession.

Ministers were not required to work on the principle of joint and collective responsibility. They did not come into office and go out of office together. Nor did they constitute an indivisible homogeneous whole like the British Cabinet. Their policies were not adopted after common deliberation and agreement. They were not therefore fortified by the strength of a closely organized unit. The Governor dealt with a Minister as an individual head of a department. He did not recognize the existence of a group of Ministers having a cumulative responsibility for the management of the whole mass of Transferred subjects. They had therefore merely an individual existence. In spite of their plural number, they did not form Ministries. In fact, Ministers lacked even that lesser degree of corporate character which was associated with the Executive Council. It is interesting to note that some Ministers voluntarily decided to abide by the principle of joint responsibility and when the time came they acted up to that self-imposed obligation.

JOINT WORKING OF THE TWO HALVES

The fact that Ministers were consulted individually, and that a practice grew up of the Governor overriding the Minister in case of a difference of opinion, tended to concentrate all power in the Governor's hands. The tendency to regard Ministers as mere advisers to the Governors, who might or might not accept their advice, was considered by critics to have been one of the most insidious and fatal impediments in the operation of dyarchy. The refusal of the Governors to regard themselves as mere constitutional heads, even with regard to Transferred subjects, resulted in converting the relaxation of control granted by the Secretary

of State into an addition to the autocratic powers of the irresponsible Governors.

There was one peculiar feature of the division of government **Joint purse** introduced by the dyarchical scheme. Though the provincial sphere was split into two halves, the provincial finances were left undivided. They were looked after by a Finance Member whose authority extended to the whole administration. The budget of the two halves was common and their purse was joint. There were no earmarked items of provincial revenues specifically assigned to each. All taxation was provincial and its proceeds were credited to the provincial exchequer. Out of that common reservoir, in which all monies were pooled, different sums were provided for expenditure on the various activities of the Provincial Government, whether in the Reserved or in the Transferred parts.

Executive Councillors and Ministers had therefore to meet **Joint meetings** together every year to prepare the provincial budget. The shares of expenditure to be allotted to each department had to be judiciously and equitably determined. All possibilities of income had to be carefully explored in the light of the total demand. The task was not particularly easy or simple. The outlook of an irresponsible bureaucracy was fundamentally incompatible with the needs and ambitions of popular Ministers. A spirit of give and take, of mutual accommodation, of sympathy and co-operation, was essential for the smooth functioning of such a delicate mechanism. If the differences became acute, the result was a deadlock. On such critical occasions, the Governor could allocate funds between the two halves in his own discretion and prevent the machine from coming to a standstill.

Dyarchy was never intended to be permanent. It was not **Mutual consultations** prescribed as the final form of the Indian Government. Mr. Montagu had made it abundantly clear that the Reforms proposed by him were in the nature of a stepping-stone to a nobler consummation, namely, a fully self-governing India. It was therefore recommended that those who were called upon to operate the dyarchical plan should interpret their opportunities and obligations in a broader vision. Members and Ministers could take each other into confidence and work together in the closest intimacy and co-operation. There was no legal obstacle to their holding consultations and discussions in all matters affecting their respective spheres. The Governor could take the initiative in establishing traditions of collective working. In practice, if not in law, the line of distinction between Reserved and Transferred subjects could be obliterated.

However, the idea proved to be too altruistic to be capable of being generally realized. The Madras and Bengal Governors

accepted the spirit of these recommendations to a great extent

Practical result But on the whole, the Governors were not prepared to accept all the implications of Mr Montagu's concept of dyarchy. In fact, experience showed that the Governor inevitably became the pivot and the centre of the provincial administration. He became the connecting and the co-ordinating link between the two halves and was the final judge for settling conflicts between them. Ministers complained of the undue interference of the Governor in the working of their departments. He was often inclined to override their decisions if he differed from them. The interests of the Services were to be specially safeguarded by him. In short, all governmental power tended to be concentrated in his hands.

POSITION OF THE SERVICES

The position of the Services was an interesting problem

Special safeguards under the reformed constitution. The appointment, salaries, dismissals and pensions of members of the Imperial Services continued as before to be controlled by the Secretary of State. The Government of India Act specially charged the Governor to 'safeguard all the members of our Services in the legitimate exercises of their functions and in the enjoyment of all recognized rights and privileges'. This clause was in practice interpreted broadly to mean the control of the Governor in everything relating to the Services—their appointments, postings and promotions—even though they were in the Transferred departments. The Ministers, under whom many of the officers of the Services were called upon to work, had not complete control over their subordinates and could not punish them for any infringement of duty. This was of course an undesirable position because there was the danger of the Ministers' policies not being loyally carried out.

The centre of political gravity had now shifted definitely from outside India to India itself. The days of patriarchal government, during which a large power of shaping the policy was enjoyed by the Services and a large measure of the progress of the country depended upon their efforts, had now definitely given place to the days of popular control. The diminution in the importance and prestige of the Services was the inevitable consequence of the transference of power from the bureaucracy to the people. The constitution, methods of recruitment and control of the Services, as they existed, were incompatible with the new democratic situation and the possibility of its further development.

It is agreed that the complete subordination of the executive to the legislature is the essence of responsible government of the Cabinet type as it prevails in England — It was no wonder that under the altered conditions in India there should exist considerable dissatisfaction among the Services on account of the loss of their power, and also in the Legislature on account of the restraints and limitation imposed upon its powers in relation to the Services. Complaints were made before the Reforms Inquiry Committee (Muddiman) that the members of the permanent Services did not show sufficient loyalty and co-operation in carrying out the orders of the Indian Ministers. However, instances of such apathy or disobedience were rare, and on the whole the conclusion was that the relations between the Ministers and the Imperial Services were cordial and satisfactory.

As the minority report of the Muddiman Committee pointed out, friction between the Services and their superiors was bound to arise in the altered circumstances of India as long as the relations of the Services and the legislature were not brought into closer approximation with those prevailing in England or the Dominions. The old combination of administrative and political functions in the Services was discordant with the spirit of the Montford Reforms and inconsistent with the inauguration of responsibility. That a sense of security and contentment must be guaranteed to the Services was a proposition accepted even by the minority report. It recommended that proper legislative steps be taken so as to put the Services beyond the reach of the fluctuations of political opinions or influences incidental to a system of democratic government. But as long as the old basis of the relation of the Services to the legislature was not altered in response to the altered environment, the existing state of affairs was bound to prove an embarrassing anachronism not in the least likely to induce harmony and cordiality among executive officials.

• CONTROL OF THE FINANCE DEPARTMENT

The last point to be noted in connexion with the working of the dual form of government refers to the control exercised by the Finance Department over the Transferred half. The Finance Department was a Reserved department. The Finance Member must be a member of the Executive Council. The functions of the department were stated to be to give advice on the financial aspect of administrative proposals, advice which the Ministers were at liberty to accept or reject. The evidence of almost all Ministers

and ex-Ministers, however, pointed to such a description of the Finance Department's functions as being incomplete and theoretical. Not only did the department examine the financial aspect of the new proposals, but it also examined the policy of the proposals and its bearings upon the administration. Such an examination by an irresponsible department of the proposals put forth by Ministers responsible to the legislature was open to grave objection. Nor could the Minister reject with impunity the advice given by the Finance Department, for it could withhold the needed funds unless and until the Minister produced the sanction of the Governor for the expenditure.

Besides, the Finance Member was not in charge of the Finance Department only. He also had under him some of the spending departments, and naturally the suspicion arose that an unconscious desire to promote the interests of these departments proved harmful to other departments, particularly to nation-building subjects that were left to the administration of Ministers. This state of things called for a radical reform.

The Governor, who was himself responsible to Parliament through the Secretary of State and the Governor-General for the administration of reserved subjects, was ill-suited to be the supreme appellate authority in all matters of disagreement between the Reserved and the Transferred parts, because his verdicts were likely to be those of an interested party, if not of a partisan.

A further point which has to be described in connexion with the subject of finance is the unsatisfactory character of what was known as the Meston Award. All Provincial Governments had agreed in criticizing the basis of the separation of provincial from central finance, though on different grounds. The state of the Government of India's finance, on the other hand, was rather alarming. They had accumulated deficits of Rs 62½ crores during the short period of three years from 1920 to 1923, a period which synchronized exactly with the inaugural period of the Montford Reforms. The want of funds was a constant difficulty which confronted the Ministers from the beginning. They were, for that reason, unable to pursue any policy of progressive development in the sphere of administration that was handed over to them. The majority report of the Muddiman Committee discovered, in this financial stringency, one of the most potent factors which led to the allegation of unkind critics that the Montford Reforms were a sham. The allegation, according to them, could not be refuted on account of the absence of adequate resources for development and expansion. That a revision of the Meston Settlement was urgently called for became almost an axiomatic proposition. It was, however, abolished in 1928.

Indians were dissatisfied with the whole project of dyarchy. The Parliamentary appearances that it suggested were tantalizing. But the hybrid structure, with all its imperfections and inadequacies, evoked severe criticism from politically-minded India. Those who had a personal knowledge of its inner working exposed its contradictions and defects. The ideal manifestation of dyarchical government implied the complete self-effacement of an irresponsible bureaucracy, and such voluntary sacrifice required a superhuman excellence of mind.

§4 THE PROVINCIAL LEGISLATURE

The Montford Reforms regarded the provinces as proper ground for experimentation in responsible government. It was therefore indispensable that their legislatures should be enlarged and democratized and made representative of the population in the provinces before entrusting to them the duty of controlling the executive or a part of the executive. The Act of 1919 introduced several important changes in that direction. In the first place, the legislatures ceased to be looked upon as mere enlargements of the Executive Councils. Their status as independent organs of government was recognized. Secondly, a large majority of elected non-official members was provided in their structure. The official and the nominated non-official element was not entirely removed but it was placed in a numerical minority, and their Presidents were to be elected by the members of the legislatures. Thirdly, the franchise for election to the provincial Legislative Councils was considerably lowered. For instance, in the province of Bombay those who paid a house rent of Rs 3 per month or land revenue to the extent of Rs 32 per year were given the right to vote. Comparatively poor people could therefore be actively interested in the political affairs of the province. It was the beginning of popular democracy.

The powers of these legislatures were also increased. In addition to law-making, they were given greater control over the administration by means of the rights of interpellation, adjournments, resolutions, etc. A part of the provincial budget was made subject to their vote. Lastly, they were privileged to exercise supreme authority over that portion of the provincial executive which was represented by the Transferred half. Ministers were entirely the servants of the legislatures. They had to conduct the affairs of state in accordance with the opinions of that body.

The information given in the following tables will facilitate a comparison with the changes introduced by the Act of 1935 which have been described in the following pages.

TOTAL STRENGTH OF GOVERNORS' LEGISLATIVE
COUNCILS AS GIVEN BY THE SIMON COMMISSION¹

Province	Statutory minimum	Elected	Nominated officials plus Executive Councillors	Nominated Non-officials	Actual total
Madras	118	98	7+4	23	132
Bombay	111	86	15+4	4	114
Bengal	125	114	12+1	10	140
United Provinces	118	100	15+2	6	123
Punjab	83	71	19+2	8	94
Bihar and Orissa	98	76	18+2	12	103
Central Provinces	70	55	8+2	8	73
Assam	53	30	5+2	7	53
Burma	92	80	14+2	7	103

COMPOSITION OF THE BOMBAY LEGISLATIVE COUNCIL.

ELECTED MEMBERS

	Members
Muslim Rural	22
Muslim Urban	5
Non-Muslim Rural	35
Non-Muslim Urban	11
European	2
Landholders	3
Commerce and Industry	7
Bombay University	1
	<hr/> 86

NOMINATED MEMBERS

Officials (including Executive Councillors)	20
Non-officials	
(a) Depressed Classes	2
(b) Anglo Indian	1
(c) Indian Christian	1
(d) Labour	3
(e) Others (cotton trade)	1
Total	<hr/> 114

¹ Report, vol I, p 134

² Of the members of the Non-Muslim constituencies seven must be Marathas.

TABLE SHOWING, PROVINCE BY PROVINCE, THE PROPORTION OF ELECTORS TO POPULATION IN THE GENERAL CONSTITUENCIES¹

Province	Population of the electoral areas in 1921	Electors male and female (women electors shown in brackets)	Proportion of electors to population	Proportion of male electors to adult male population	Proportion of female electors to adult female population
	Figures to the thousand	nearest	per cent	per cent	per cent
Madras	4,23 19,000	13,65,000 (1,16,000)	3.2	11.6	1.0
Bombay	1,92,92,000	7,59,000 (39,000)	3.9	13.4	0.8
Bengal	4,62,41,000	11,73,000 (8,000)	2.5	9.7	0.3
United Provinces	4 53,76,000	15,89,000 (51,000)	3.5	12.1	0.4
Punjab	2,06,75,000	9 97,000 (21,000)	3.1	11.9	0.9
Bihar and Orissa	3 38,20,000	3 73,000 (nil)	1.1	4.6	
Assam	67,35,000	2,50,000 (about 3,000)	3.7	14.2	0.2
Central Provinces and Berar	1,27 80,000	1,69,000 (nil)	1.3	5.2	
Governor's Provinces excluding Burma	22,72,36,000	63,75,000 (2,38,000 in six provinces)	2.8	10.1	0.6

§5 THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

It was intended to be a constitutional principle that the exercise of the multifarious powers of the Legislative Council in all matters arising out of the **Control over Transferred departments** Transferred departments should be absolutely unfettered. (The essence of responsible government consists of the complete subordination of the executive to the legislature) and the provincial Councils had to play the same role with reference to Ministers as the House of Commons plays to the British Cabinet. The Council's disapproval of the action of a Minister must be followed by his resignation or the dissolution of the Council and the election of a new one on the issue of the disputed point.

¹ Report, vol I, p 191

The state of things, where the executive enjoys perfect immunity and security of tenure, and where simultaneously the legislature is endowed with powers which definitely tend to control the executive, did not exist in the administration of the Transferred heads. Ministers were elected members of the legislature and were responsible to it. Their salary was voted by it and so were most of the sums of money necessary for their departments. Ministers therefore were the servants of the legislature, and in the last instance, of the constituencies which elect the Council.

The Governor's extraordinary veto over the Ministers or over the Legislative Council was intended to be used only in the rare cases where a Minister's or legislature's action would, in the opinion of the Governor, lead to disastrous consequences and hamper him in the fulfilment of his responsibility towards Parliament. In practice, therefore, the Council's control was supreme over the ministerial half of the Provincial Government in all matters whether of policy or of detail or of finance. There had to be complete harmony between the Ministers and members of the Legislative Council. They had to have the same view-point and angle of vision.

In the Reserved half, on the other hand, the situation was rather different. It was true that legislative and financial measures necessary for the conduct of the Reserved departments had to be passed by the provincial legislature, which could also use its powers of interpellation and moving resolutions in those matters. Yet there was a difference. The members in charge of the Reserved half, with the Governor at their head, were responsible ultimately to Parliament through the Secretary of State and the Governor-General. They were answerable to that body for their actions in the management of their trust. Thus responsibility to an extra-territorial authority made it necessary that in case of disagreement between the Executive Council and the legislature on questions relating to the Reserved heads, the former should be given extraordinary power to have its own way even against the expressed wishes of the legislature.

Unlike the Ministers, the executive councillors were not removable on an adverse vote of the Legislative Council, their salaries were non-votable, their final supervising and controlling agency was not the legislature of the province, but the Governor-General-in-Council and the Secretary of State. Hence if they were kept in a situation in which they had to depend upon the legislature for the discharge of their duties and the performance of their functions, they would require the right of following their own ideas in any conflict between themselves and such a controlling body.

Therefore the Governor, like the Governor-General, was given the power of what was known as certification. By the use of this power he could enact any necessary piece of legislation that was not agreed to by the legislature, or restore any grant that was rejected by that body. Therefore, though the budget of even the Reserved half was voted by the Council, there was the possibility of the Governor more frequently resorting to the weapon of certification for the restoration of rejected grants in this sphere of Government departments than in the case of the Transferred ones.

Yet the legislature's influence upon the executive must prove to be great under such a condition of things. Persistent defiance of the legislature's opinion by the executive would amount to acknowledging the existence of rigid autocratic rule, which would be fatal to the smooth working of the constitution. Hence though the effective legal powers over Reserved heads, enjoyed by the legislature could be described to be but small, the placing together of a democratically elected and representative legislature armed with powers of compliance and refusal, and of an irresponsible and irremovable executive working under it, could not fail to have its own result. The executive could effectively differ from the legislature only through the instrumentality of what was admittedly an extraordinary weapon, namely the power of certification. In such circumstances the indirect control exercised by the legislature was far from insignificant. Questions, resolutions, adjournments, legislation and voting a part of the budget were important powers possessed by the Legislative Councils, and their constant use was bound to prove very beneficial and salutary.

XXXI THE PROVINCES IN THE FEDERAL CONSTITUTION

§1 NEW STATUS OF THE PROVINCES

By the Act of 1919 and the Devolution Rules made under it, certain subjects were ear-marked as 'provincial', and governmental functions in respect of them were allowed to be exercised primarily by the provincial authorities. But the responsibilities entrusted in this way to the provinces were not exclusive. The Governor-General-in-Council and the central legislature possessed concurrent powers in the provincial sphere, they had not ceased to possess any legal power or authority regarding matters falling within the provincial sphere.

The Act of 1935 has introduced an important departure from the introduction of this system. The constitutional structure that it has framed is based on the concept of provincial autonomy whereby, in the words of the Joint Parliamentary Committee, 'each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere, broadly free from control by the Central Government and the Legislature'. The Act also contemplates the establishment of the Federation of India in which the autonomous provinces and the Indian States will be federally united.

The status of the Indian provinces must therefore undergo a vital change in the new Indian polity. They can no longer be considered as mere territorial divisions, created by the Central Government for its own convenience, and enjoying merely a devolved and not an original authority. Their powers and privileges cannot henceforward be attributed to mere delegation by the Central Government. A federal unit has an independent existence of its own. It possesses certain rights which are guaranteed to it under the constitution, and which cannot be tampered with or violated by the Federal Government. The powers of supervision and control entrusted to the latter are strictly limited and are defined as accurately as possible.

The relations between the Government of India and the provinces are conceived and defined on a federal basis in the new constitution. There is now a greater emphasis on the concept of equality than on the idea of subordination and obedience in formulating the status of the provinces vis-a-vis the Central Government. A distinct sphere of activity is marked out and assigned to each one of those two

entities. A third common sphere is created for their concurrent jurisdiction and action. Three separate lists of subjects are compiled in accordance with this threefold division of governmental functions. They are exhaustively given in the Seventh Schedule of the Act.¹

It is quite clear from sections 8, 49, 99 and 100 that the authority of the Federation does not normally extend to subjects enumerated in the Provincial Legislative List. The provincial authority alone is competent to govern in that sphere.

§2 THE PROVINCES TODAY

Section 46 of the Act prescribes that the following shall be **Governors' provinces** the Governors' Provinces: Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. The total is eleven. Sind and Orissa have been newly created by section 289 of the Act. Burma has been separated from, and has ceased to be a part of, India.

The province of Berar was perpetually leased by the Nizam **Position of Berar** to the British Government in 1902, and section 47 of the Act prescribes that the Central Provinces and Berar should be governed together as one Governor's province. By an agreement signed between His Majesty and the Nizam in October 1936 His Majesty recognizes the sovereignty of the Nizam over Berar, but it is to be administered along with the Central Provinces as if it were a part of British India. The Governor of the province is to be appointed by His Majesty after consultation with the Nizam, who has also the right to maintain an agent in its capital.

The Act provides the same kind of constitutional structure **Uniformity of provincial constitutions** for all the provinces, with variations of detail appropriate to their individual requirements and peculiarities. Their administrative systems are also likely to possess several common features in actual practice, though in the enjoyment of its autonomous powers each province is free to develop according to its own ideals and ability.

Certain areas in some of the Governors' Provinces are in- **Excluded and Partially Excluded Areas** habited by people who are almost in a primitive condition of life and are totally unfit for any kind of advanced or democratic government. The constitutional reforms introduced by the Act of 1935 obviously could not apply to them. But Parliament decided that the administration of such backward tracts and the welfare of their uneducated inhabitants could not be entrusted

¹ For the three Lists see Ch. XXII § 2.

to the care of responsible Indian Ministers That duty has been placed in the hands of the Governor

Section 91 of the Act empowers His Majesty to declare by an Order-in-Council that certain areas are to be considered as Excluded or Partially Excluded Areas The draft of such an order was to be put before Parliament for its approval within six months of the passing of the Act The procedure was followed, and in March 1936 an Order was issued specifying the limits of the Excluded and Partially Excluded Areas in the different provinces They can be altered at any time by subsequent Orders-in-Council which may be issued by His Majesty

In Bombay there are only Partially Excluded Areas, which include the Shahada, Nandurbar and Taloda taluks of West Khandesh District, Kalyan taluk and Peint peta of Nasik District, Dahanu and Shahapur taluks and Umbergaon peta of Thana District, and Dahod taluk and Jhalod mahal of the Broach and Panch Mahals District

The Excluded and Partially Excluded Areas are within the executive authority of a province, but only such federal or provincial laws or portions of these laws will apply to them as the Governor may by public notification direct He may also make Regulations for the peace and good government of any such area These Regulations have to be submitted to the Governor-General forthwith and assented to by him in his discretion The Governor's functions in respect of an Excluded (not a Partially Excluded) Area are to be exercised in his discretion In the Partially Excluded Areas he is presumably expected to act on the advice of his Ministers

A few smaller areas have been formed into independent units for various reasons, and special administrative arrangements have been made for them For instance, Delhi as the capital of the whole country is not incorporated in any particular province British Baluchistan, standing on the frontier of India, and Ajmer-Merwara standing as a British island in the midst of the territory of the Rajput States are classed independently Section 94 of the Act prescribes that Delhi, British Baluchistan, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the area known as Panth Piploda (in Central India) shall be Chief Commissioners' Provinces

These provinces are within the executive authority of the Federation and will be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion Section 95 prescribes that in directing and controlling the administration of British Baluchistan, the Governor-General will act in his discretion Only such

federal Acts or portions of such Acts will apply to it as the Governor-General by public notification directs. He may also in his discretion make regulations for the peace and good government of British Baluchistan, subject to disallowance by His Majesty. Regulations may similarly be made by the Governor-General for the Andaman and Nicobar Islands.

In the case of the other Chief Commissioners' Provinces, the powers of the Governor-General, except in respect of the appointment of the Chief Commissioner, will presumably be exercised on the advice of the federal Ministers.

The creation of new provinces and the alteration of the boundaries of the existing provinces are matters of great constitutional importance. By section 290 of the Act, these powers are vested in His Majesty and he can exercise them by issuing Orders-in-Council. But before any such order is issued, the opinion of the Government and the legislature of the provinces concerned, as also the opinion of the Federal Government and federal legislature, have to be ascertained. In effect, therefore, this power may be now said to be exercised with the approval of the Indian people. At least negatively speaking, it is no longer possible to change the boundaries of a province in a manner which offends Indian opinion as happened in the case of the Bengal Partition in 1905.

AREA AND POPULATION OF THE PROVINCES
As given in the Indian Delimitation Committee's Report, 1936

Name of province	Area	Total population	General— including scheduled castes	Scheduled castes	Muslims	Anglo- Indians	Euro- peans	Indian Christians
Madras	126,663	44,183,609	39,083,342	6,944,747	3,290,291	28,630	12,841	1,703,791
Bombay	77,221	18,192,475	15,602,932	1,673,896	1,602,385	14,176	18,028	267,460
Bengal	72,514	50,114,002	22,493,659	9,124,925	27,497,624	27,573	20,895	129,134
United Provinces	106,248	14,408,763	40,905,586	12,591,525	7,181,927	11,263	22,043	170,216
Punjab	91,919	23,551,210	6,328,415	1,440,750	13,302,991	2,995	19,106	392,144
Bihar	69,348	32,371,131	28,194,621	4,490,599	4,140,327	5,892	5,890	331,185
Central Provinces and Berar	99,920	15,507,723	11,815,054	2,927,343	682,851	4,740	5,075	35,531
Assam	27,572	8,214,076	1,858,770	572,490	2,753,563	558	2,961	117,200
North-West Frontier Province	13,518	2,425,003	142,977		2,227,303	150	7,947	4,116
Orissa	32,681	8,174,251	8,013,018	1,006,983	131,233	635	856	36,573
Sind	16,378	3,887,070	1,015,225	99,551	2,830,800	1,930	6,576	6,627
India—excluding Burma and Aden	1,575,107	338,119,154	236,622,602	50,250,317	77,049,868	119,143	274,029	5,570,240
British India—excluding Burma and Aden	862,599	256,808,309	177,175,450	39,137,405	66,392,766	101,380	238,592	3,198,837

XXXII. THE AMBIT OF PROVINCIAL AUTONOMY

It has been explained in the last chapter how the provinces have acquired a new status of independence in the federal constitution, and how they have been made autonomous in a sphere specifically assigned to them. It is necessary to understand the extent within which their autonomy will be operative, and the limits that have been imposed on it. The legislative, executive and financial powers enjoyed by the provinces under the new scheme must be properly grasped. They have been described in the following pages.

§1 THE LAW-MAKING POWERS OF A PROVINCE

The constitutional position in respect of the powers of legislation to be exercised by the Federation and the provincial units has been clearly stated in section 100 of the Act. The purpose of creating three different lists of subjects is obvious. They are intended to bring about a decentralization of authority. It is therefore laid down that the federal legislature has, and the provincial legislature has not, power to make laws with respect to any matter enumerated in the Federal Legislative List, that the provincial legislature has, and the federal legislature has not, power to make laws with respect to any matter enumerated in the Provincial Legislative List, and that the federal legislature, and the provincial legislature also, have power to make laws with respect to any matter enumerated in the Concurrent Legislative List.

A special provision is made in section 102 for cases of grave emergency when the security of India is threatened, whether by war or by internal disturbance. On such exceptional occasions the federal legislature will have power to make laws for a province with respect to any matter enumerated in the Provincial Legislative List. But no Bill or amendment for that purpose can be introduced without the previous sanction of the Governor-General given in his discretion. Such a sanction is not to be given unless it appears to him that the provision proposed to be made is proper in view of the nature of the emergency. It is for the Governor-General, acting in his discretion, to declare by Proclamation that a state of emergency exists. Such a Proclamation may be revoked subsequently. But it will cease to operate at the expiration of six months unless Parliament directs otherwise.

In matters falling entirely within the provincial sphere, sometimes a common legislative action may be felt to be desirable.

by two or more provinces Their legislatures may request, by Resolutions, that such matters should be regulated in their individual provincial areas by an Act of the federal legislature In response to such requests, it will be lawful, according to section 103, for the latter body to pass the necessary Acts An Act so passed may, as regards any province to which it applies, be amended or repealed by an Act of the legislature of that province

In the actual conduct of the administrative machine, it may be revealed on some rare occasions that a particular matter which requires to be disposed of cannot be appropriately held to fall either in the Federal or the Provincial or the Concurrent sphere, as defined in the three Legislative Lists The question then arises as to who is the competent authority to pass the necessary legislation Every federation has to make provision for what are known as residual powers In India, those powers are vested practically in the Governor-General by section 104 of the Act He has been allowed, in his discretion, to empower either the federal legislature or the provincial legislature to enact laws pertaining to topics of such doubtful jurisdiction

In spite of the delimitation of legislative spheres, some few instances of mutual entanglement and complicated relationship may be discovered in actual experience The federal as well as a provincial legislature may happen to have passed Acts on an item which belongs to the Federal or to the Concurrent List A provision of the provincial law may be in conflict with or repugnant to a provision of the federal law In such cases it is definitely laid down in section 107 that the federal law shall prevail and that the provincial law, to the extent of the repugnancy, shall be void However, if the provincial law so passed concerns a subject in the Concurrent Legislative List and if it has received the assent of the Governor-General or His Majesty, it will prevail in that province

The previous sanction of the Governor-General, given in his discretion, is made obligatory by section 108 for the introduction of the following Bills or amendments in a chamber of the provincial legislature

Previous sanction of the Governor-General

(i) a Bill which repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India, (ii) a Bill which repeals, amends or is repugnant to any provisions of any Governor-General's Act or any ordinance promulgated by him, (iii) a Bill which affects matters which are in the discretion of the Governor-General, (iv) a Bill which affects the procedure for criminal proceedings in which European British subjects are concerned

Chapter III of Part V of the Act, sections 111-21, contains elaborate provisions with respect to discrimination by the Indian legislatures against British subjects domiciled in the United Kingdom or Burma. They apply both to federal and provincial laws. Provinces are therefore precluded from passing any kind of discriminatory legislation against British subjects, British companies and corporations, British ships and aircraft, British-registered medical practitioners, British persons carrying on any occupation, trade or business, etc. Thus even 'provincial autonomy' has been subjected to serious limitations and deductions, which are defined in terms which are not only explicit but extremely wide. In the nature of things, every attempt made by Indian Ministers to improve India's material condition can be easily interpreted to affect adversely some British interest or another. The full liberty of action that is supposed to have been conferred upon the provinces is in reality very considerably diluted.

Section 110 expressly provides that nothing in the Act shall be taken to affect the power of Parliament to legislate for British India or any part of it, and that nothing shall be taken to empower the federal or provincial legislature to make any law affecting the Sovereign or the Royal Family or the succession of the Crown, the sovereignty, suzerainty or dominion of the Crown, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act, or the law of Prize Courts. Similarly, the Act of 1935 or any Order-in-Council made thereunder or any rules made thereunder cannot be amended unless it is expressly permitted in the Act.

§2 THE EXECUTIVE POWERS OF A PROVINCE

It is distinctly provided that the executive authority of each province extends to the matters with respect to which the legislature of the province has power to make laws (sub-section 2 of section 49). Within the framework of the Federation, the provincial sphere is differentiated and it is entrusted to the Provincial Governments. The latter are no longer under the general obligation of obeying the orders of the Governor-General-in-Council and of constantly and diligently informing him of their proceedings. They are presumed, *prima facie*, to have independence of judgement and action in their own domain. Provincial policy and administration are to be determined by the people of the province acting through their legislatures and Ministers. It is one of the fundamental principles of provincial autonomy that the affairs of the province should be left to be managed by those

who live in the province and are directly affected by the nature of its Government

However, certain restrictions have necessarily to be imposed on the executive freedom of even autonomous provinces when they are federated together in one composite whole. In the federal constitution of a country like India, the number of such restrictions and the scope for their operation is conspicuously large. That is inevitable in an atmosphere of Reservations, Safeguards and Special Responsibilities. It is necessary to understand the limits which have been prescribed in the conduct of the provincial administration. They have been elaborated in Part VI, sections 122-35, of the Act.

The Provincial Governments have no executive authority in respect of subjects which are not mentioned in the Provincial Legislative List and which are not therefore within their legislative competence. Laws passed by the federal legislature in respect of subjects enumerated in the Federal Legislative List have application in the whole country, and their administration and execution is entrusted to the Federal Government. To that extent the latter has *locus standi* and definite right of operation in the provincial territory.

It is laid down that the executive authority of every province shall be so exercised as to secure respect for the laws of the federal legislature which apply in that province. The Governor-General may direct the Governor of any province to discharge as his agent such functions in, and in relation to, tribal areas or in relation to defence, external affairs or ecclesiastical affairs as may be specified in the direction. These functions are to be performed by the Governor in his discretion.

The Governor-General may, with the consent of the Governor of a province, entrust either conditionally or unconditionally to its Government or to its respective officers functions in relation to any matter to which the executive authority of the Federation extends. An Act of the federal legislature may also confer powers and impose duties upon a province or its officers in respect of subjects which are not enumerated in the Provincial or Concurrent, Legislative Lists and are therefore outside the jurisdiction of a province. Any extra cost of administration incurred by a province for this purpose will be paid by the Federation.

The executive authority of a province has to be exercised so as not to impede or prejudice the exercise of the executive authority of the Federation. The latter can give such directions to a province as may appear to the Federal Government necessary for that purpose. Directions may similarly be given about carrying out

in a province federal laws which relate to matters specified in Part II of the Concurrent Legislative List (subjects like factories, labour welfare, trade unions, electricity, inland shipping and navigation, cinematograph films, etc), and about the construction and maintenance of means of communication of military importance

The Federation may require a province to acquire any land situated in a province for a federal purpose at the expense of the Federation. In respect of broadcasting it is laid down that the Federal Government shall not unreasonably refuse to entrust to the Government of any province such functions as may be necessary to enable that Government to construct and use transmitters in the province and to regulate and impose fees in that connexion, but this does not restrict the powers of the Governor-General for preventing any grave menace to the peace or tranquillity of India or any part of it and does not prohibit him from imposing upon Provincial Governments such conditions regulating the matter broadcast as appear to him necessary

Disputes between the provinces about supplies of water from any natural source have to be referred by the Governor-General to special *ad hoc* commissions consisting of men of expert knowledge and experience and after considering reports made by them the Governor-General has to give decision in the matter of the complaint and to issue the necessary orders. On the request of any of the provinces, if made before the Governor-General's decision is given, the matter must be referred to His Majesty-in-Council. The orders of His Majesty or of the Governor-General must be given effect to by the provinces concerned

It will be lawful for His Majesty-in-Council to establish, after considering representations made to him by the Governor-General, an Inter-Provincial Council for dealing with problems affecting more than one province. It would be charged with the duty of (i) inquiring into and advising upon disputes which may have arisen between the provinces, (ii) investigating and discussing subjects in which the provinces and the Federation have a common interest, and (iii) making recommendations for the better co-ordination of policy and action with respect to such subjects

Clause 5 of section 126 of the Act prescribes that the Governor-General acting in his discretion may at any time issue orders to the Governor of a province as to the manner in which its executive authority is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part of it. The Joint Parliamentary Committee explained that such a clause was necessary, over and above the Governor's Special Responsibility for the same subject, because

the peace and order in one province may be endangered by events taking place in another, and that as the ultimate and residuary responsibility for the peace and tranquillity of the whole of India rests upon the Governor-General, he should have such wide powers to give directions to the Governor

It will be found that the clause has been very generally worded and can extend to and cover any action of a Provincial Government. It was in the exercise of this power that the Governor-General issued orders in February 1938 to the Governors of the United Provinces and Bihar preventing the wholesale release of political prisoners in those provinces in spite of the fact that the measure was initiated and sanctioned by the responsible Ministers of the provinces, backed by their respective legislatures

Under section 102, if the Governor-General has in his discretion declared by a Proclamation that a grave emergency exists whereby the security of India is threatened whether by war or internal disturbance, the federal legislature has power to make laws for a province or any part of it with respect of any of the matters enumerated in the Provincial Legislative List and therefore reserved to the provinces under normal conditions. But this did not include the power to make rules under an Act which is an exercise not of legislative but of executive authority. Nor was any provision made in the Act to equip the Central Government, in such times of emergency, with an overriding executive authority throughout the country.

This was considered by His Majesty's Government and the Government of India to be a serious omission in the constitutional framework, and Parliament was persuaded to rectify the mistake by amending the Act in 1939. The amendment added among other things, a new section to the Act of 1935 for the purpose of furnishing the Central Government in times of war with supreme direction and control over the whole of British India. This is section 126A, which consists of two clauses.

It prescribes that when a Proclamation of Emergency is in operation whereby the Governor-General has declared that the security of India is threatened by war (not by internal disturbances, this section does not extend to them), the Federal Government can give directions to a province as to the manner in which its executive authority is to be exercised. It also provides that a federal law made for a province in regard to any subject can confer powers and impose duties upon the Federation or any of its officers in respect of that subject. They are thus authorized to take, in times of war, executive action in the exclusively provincial sphere by appointing their own officers or agents to function in the provinces.

* The Secretary of State, when introducing the second reading

of the Amending Bill in the House of Lords, declared that it was simply and solely a war measure and did not initiate any new principal but merely implemented what was already provided for by section 102. He considered that in the exigencies of a modern war it was quite necessary that the Central Government should exercise the general powers of superintendence, direction and control which it enjoyed in the past. On the other hand, nationalist opinion in India severely criticized the new measure as an invasion on provincial autonomy and the rights of the Indian people.

§3 THE FINANCIAL POWERS AND RESOURCES OF A PROVINCE

The success of a democratic government depends, to a very great extent, on the size and volume of its purse. **Democracy is expensive.** A government by and for the people must necessarily endeavour to elevate the people and to bring happiness and the joy of life to the masses. It must create public services and public utilities of various kinds and help to raise the material and spiritual level of the whole community. The justification of democracy is the belief that it can become a mighty force of general progress. The fulfilment of that ideal entails an enormous expenditure of money. If the necessary amounts are not forthcoming, the real objective of the democratic form of government will not be easily achieved.

The history of provincial finance in India is long and chequered. A brief reference has already been made to it.¹ The Act of 1935 has distributed subjects between the Federal and Provincial Governments by the compilation of separate Lists. **Revenues from the Provincial Legislative List** It must be clearly understood that all revenues derived from subjects in the Federal List will naturally go to the Federation. Similarly, all revenues obtained from subjects in the Provincial Legislative List will be taken by the provinces. But some additional sources of income are also provided for the latter, and they have been specified in Part VII of the Act. A distinguished financial expert, Sir Otto Niemeyer, was subsequently asked to make recommendations for determining some important details which were not laid down precisely in the Act. His report was published in 1936 and all the suggestions it contained were accepted. They were subsequently embodied in a separate Order-in-Council.

The following are the main sources of income to the provinces from subjects enumerated in the Provincial Legislative List: land revenue, excise duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs, non-narcotic drugs, medicinal and toilet preparations contain-

¹ See Ch XIX § 2 and Ch XX § 2.

ing alcohol, taxes on agricultural income, taxes on lands and buildings, hearths and windows, duties in respect of succession to agricultural land, taxes on mineral rights, capitation taxes, taxes on professions, trades, callings and employments, taxes on animals and boats, taxes on the sale of goods and advertisements, cesses on the entry of goods in a local area, taxes on luxuries including taxes on entertainments, amusements, betting and gambling, stamp duty in respect of documents other than those specified in the Federal Legislative List, duties on passengers and goods carried on inland waterways, tolls, fees in respect of any matters contained in the Provincial Legislative List. The Amendment Act added two more items, namely taxes on vehicles suitable for use on roads whether mechanically propelled or not, and taxes on the consumption or sale of electricity excepting the electricity consumed by or sold to the Federal Government or consumed in the construction, maintenance or operation of a federal railway.

The U P Government put a wide interpretation on their power to impose a tax on employments and callings, and enacted in 1939 an Employment Tax bill which sought to impose a substantial graded tax on incomes derived from employment in the province. In a large number of cases the taxes would have amounted to ten per cent of the employee's income. It was felt that this sort of imposition was nothing less than an income-tax in disguise and that it trespassed upon the federal field of revenue. The Bill was therefore reserved for the assent of the Governor-General. In the meantime, opportunity was taken, when Parliament was considering the Amending Bill, to put this matter beyond dispute and make clear the distinction between taxes on income on the one hand and taxes on professions, trades, callings and employments on the other. Municipalities and local boards in many provinces had been empowered to levy rates for local purposes on these items long before the Act of 1935, and it was to keep alive this right that they were included in the Provincial Legislative List. The incidence of such taxes on individual tax payers was of course small. The Amendment Act¹ limits the amount which might be levied upon any individual in any one year under the heading 'tax upon professions, trades, callings and employments' to Rs. 50, and thus restricts it to the purpose for which it was originally designed. The Federal and Provincial Legislative Lists have been amended accordingly, and a new section, section 142-A, has been added to the Act.

Over and above the proceeds of taxation in respect of matters in their own sphere, the provinces will now have

Additional sources the following potential sources for obtaining further income for their own use

¹ *India and Burma (Miscellaneous Amendments) Act, 1940*

(1) Duties in respect of succession to property other than agricultural land, stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, etc., terminal taxes on goods and passengers carried by railway or air, taxes on railway fares and freights. All these taxes will be levied and collected by the Federation, but their net proceeds are not to be credited to federal revenues. They will be wholly assigned to the provinces and distributed among them as prescribed by an Act of the federal legislature. The Federation can however levy a surcharge on these taxes for its own purposes.

(2) Income-tax. This item has been a wholly central source of revenue till now. Even hereafter, it will continue to be levied and collected by the Federation. But section 138 provides that a prescribed percentage of the net proceeds in any financial year of such a tax should be assigned to the provinces and distributed among them in a manner prescribed. Sir Otto Niemeyer was asked to make recommendations about these details and they have now been carried out. It has been decided, after the Niemeyer Report, that 50 per cent of the net proceeds of this tax should be assigned to the provinces for their use. The percentage of the share of each province from the total amount that is available for distribution among them is fixed as follows: Bombay and Bengal, 20 per cent each, Madras and the United Provinces, 15 per cent each, Bihar, 10 per cent, Punjab, 8 per cent, the Central Provinces, 5 per cent, Assam, Orissa and Sind, 2 per cent each, and the North-West Frontier Province, 1 per cent.

However, this arrangement was not intended to take effect immediately on the inauguration of provincial autonomy. The Government of India has been impeded by severe financial stringency for the last eight years. Its income has dwindled, and there have been serious deficits in its budgets. Its expenditure is declared to have reached an irreducible minimum. The new constitution has also inevitably added to its financial burden. In such a state of unstable equilibrium it is considered risky for the Central Government to part with a substantial fraction of its own assets. The Act has therefore provided that no portion of the income-tax receipts may be granted to the provinces as long as the Government of India feels that it cannot afford to do so. Sir Otto Niemeyer recommended that for a period of ten years, the central authority should be permitted to retain the whole or part of that amount for their own expenditure. There was therefore no hope of any immediate assistance or relief to the provinces from this particular source.

However, there was an agreeable surprise when it was announced in March 1938 that the Government of India had found it possible to allot to the provinces a small sum of Rs. 125 lakhs out of their income-tax revenue of the financial year 1937-8.

Out of that total each province received the following amount — Bombay and Bengal, Rs 25 lakhs each, Madras and the United Provinces, Rs 18½ lakhs each, Bihar, Rs 12½ lakhs, the Punjab, Rs 10 lakhs, the Central Provinces, Rs 6½ lakhs, Sind, Orissa and Assam, Rs 2½ lakhs each, and the North-West Frontier Province, Rs 1½ lakhs

(iii) Duties on salt, federal duties of excise, export duties these will be levied and collected by the Federation. But the whole or part of the net proceeds may be paid to the provinces by an Act of the federal legislature and the principles of distribution among them will be formulated by the Act. It was also laid down in the Act of 1935 that fifty per cent or more of the net proceeds of the export duty on jute shall be assigned to the jute-producing provinces in proportion to their production. The Niemeyer Report recommended—and the recommendation was accepted—that 62½ per cent of the net proceeds of the jute export duty be assigned to the provinces in which jute is grown. Bengal and Assam are the chief gainers by this concession.

It is a matter of primary importance that the units of a federation should be solvent. Their respective revenues and expenditure must balance. The grave financial condition of any province cannot be looked upon as the domestic concern of that particular unit, it affects the whole country and must be taken cognizance of by the Central Government. Section 142 therefore makes a provision for grants-in-aid by the Federation to such provinces as His Majesty may determine to be in need of money.

Accordingly, an effort was made to investigate the existing and prospective budgetary position of all the provinces that were proposed to be united into the Federation of India. Sir Otto Niemeyer also examined the question. It was found that some of the provinces were so deficient in resources that, with their own revenues only, they could not maintain an administration of the minimum standard of efficiency. There were also other provinces like the North-West Frontier Province in which strategic considerations transcended all other claims. The military expenditure incurred by these units, though geographically it falls within their area, is really incurred for the whole country. That huge burden obviously should not be shifted to, nor can it be borne by, the limited means of the province alone.

It has therefore been decided that in all such cases where the need for assistance is clearly proved, the Federal Government should make grants-in-aid every year from its own revenues. The following figures have been recommended in the Niemeyer Report: the United Provinces, Rs 25 lakhs for five years, Assam Rs 30 lakhs, the North-West Frontier Province, Rs 100 lakhs, to be reconsi-

dered after five years, Orissa, Rs 40 lakhs, increased to Rs 47 lakhs in the first year and to Rs 43 lakhs in the second, third, fourth and fifth years, Sind, Rs 105 lakhs, increased to Rs 110 lakhs in the first year and diminished after the tenth year by large sums every year so that the whole subvention may be wiped out within about forty years.

The power of borrowing money upon the security of its revenue has been conferred upon the province by section 163. The conditions and limits of such loans are to be determined, from time to time, by an Act of the provincial legislature. No moneys can be borrowed outside India without the consent of the Federation. The latter may also make loans to a province or give a guarantee in respect of loans raised by a province.

Under section 167, His Majesty may appoint a separate Auditor-General for a province if its legislature so desires, and charge, by an Act, his salary on the revenues of the province. But no such appointment will be made till at least three years have elapsed after the date of the passing of the provincial Act. It is the duty of the Auditor-General to prepare accounts and also to audit them. At present that duty is performed for the Central Government and for all the provinces by the Auditor-General of India, who is appointed by His Majesty and is endowed with great independence and authority.

XXXIII THE PROVINCIAL EXECUTIVE THE GOVERNOR

Two constituents of the Governor and the Council of Ministers The executive government in the province is composed of the Governor and a Council of Ministers. The Governor is not merely a titular head, but an actual, *de facto*, ruler. He has always been in possession of large powers and his influence over the administration, both legal and personal, is enormous. He was described as the keystone of the dyarchical structure which was inaugurated by the Montford Reforms. Even in the administration of autonomous provinces which have been formed by the act of 1935, the Governor holds a unique, pivotal position. It is necessary to understand clearly the part which he is called upon to play in the operation of self-government in the provincial sphere. The duties of the Council of Ministers, its composition and method of working, will also require detailed study. For convenience, it is best to split up the two constituents of the provincial executive and to treat them separately. That is done in the two following sections.

§1 APPOINTMENT, QUALIFICATIONS AND SALARY

An old and important office The office of Governor is very old in the history of British India. It has been in existence for nearly three centuries. Till the middle of the eighteenth century, the duties of the Governors were almost purely commercial and therefore comparatively simple. The number of Governors was only three and they were located in the cities of Madras, Bombay and Calcutta. After the Company began to fight wars and build an Empire in India, the office of Governor-General was created by the Regulating Act. His supremacy extended in course of time to the whole country. The Governors of provinces lost their independence and became subordinates of the Central Government. But none the less, they have continued to be responsible heads of large territorial areas and have been invested with great prestige and authority.

Equality of powers over the provinces The number of Governors was nine after the Montford Reforms and has now increased to eleven in consonance with a similar increase in the number of provinces. In the possession and exercise of powers over the provincial units in their charge, all Governors are absolutely equal. Their control over the administrative machinery of the province is defined in the same constitutional language. The official status and privileges which they enjoy within their respective jurisdictions are identical in all cases.

The factors which establish the pre-eminence of the Governor in all aspects of provincial life are similar in every province

Yet, in spite of this equality in prestige and power, there is a kind of gradation even in the exalted office of Governor. The size of all the provinces is not the same. Some are extensive and populous, others are comparatively small. Some are industrially and commercially advanced and have therefore a large revenue. Others are predominantly agricultural and are endowed with smaller resources. Some have a historical tradition of long standing, others are of recent growth. This difference in the material circumstances of the provinces is reflected in the salaries and allowances that are sanctioned for their Governors. All these high dignitaries do not receive the same emoluments. There are considerable variations, as is shown by the figures in the statement on the following page.

There is a further important distinction. Technically, all Governors are appointed by His Majesty. However, it is a fundamental principle of the British constitution that the King always acts on the advice of his responsible Ministers. It has been a long established practice that the Governors of the older presidencies of Madras, Bombay and Bengal are selected on the recommendation of the Secretary of State for India. They are men in the public life of Britain, holding a prominent place in the party in power and often possessing some amount of parliamentary experience. In a few instances—as in the case of Sir John Anderson, Governor of Bengal (1932-7)—they may be distinguished officials in the British Civil Service. But these governorships are definitely put beyond the reach of persons who are serving in India. They are reserved for the ambition and talent of influential members of the British aristocracy and serve as some of the substantial prizes of British public life. These persons are expected to possess the breadth of vision and sympathy which are necessary in governing a foreign people.

On the other hand, the Governors of all the remaining provinces, now eight in number, are selected on the recommendation of the Viceroy. They are senior members of the Indian Civil Service, with a long administrative experience in various departments. They are supposed to have a brilliant official record of industry, tact, and success in the performance of their duties. A young civilian, standing at the lowest rung of the bureaucratic ladder as assistant collector, can hope to rise, through the successive stages of collector, commissioner, and secretary to Government, to the eminence of provincial Governor.

The substantial salary and the immense powers and status of the office make it one of the strongest inducements to young

SALARIES AND ALLOWANCES PAYABLE TO PROVINCIAL GOVERNORS

Name of province	Annual Allowances										Equipment and travelling charges when appointed from Europe	Leave allowances per month
	Annual salary	Renewal of furniture	Maintenance of furniture	Military Secretary and establishment	Surgeon and his establishment	Band and Bodyguard	Tour expenses	Sumptuary allowances	Miscellaneous including maintenance of cars	Total		
	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	£	Rs
Madras	1,20,000	14,000	21,500	1,12,000	96,600	1,69,000	1,13,000	18,000	92,000	5,76,100	2,000	4,000
Bombay	1,20,000	23,000	25,000	1,36,000	33,600	1,23,000	65,000	25,000	1,08,000	5,38,600	2,000	4,000
Bengal	1,20,000	20,500	34,000	1,21,000	31,400	1,50,000	1,22,000	25,000	1,00,000	6,07,300	2,000	4,000
United Provinces	1,20,000	4,000	14,500	1,16,000	.	1,50,000	1,25,000	15,000	23,000	2,97,500	1,800	4,000
Punjab	1,00,000	3,000	10,500	88,000	.	1,16,000	60,000	12,000	21,700	1,95,200	1,500	4,000
Bihar	1,00,000	4,500	13,000	75,000	.	1,16,000	60,000	6,000	21,700	1,80,200	1,500	4,000
Central Provinces and Berar	72,000	2,900	9,800	61,000	.	1,09,000	26,000	6,000	16,600	1,22,300	1,200	3,000
Assam	66,000	1,000	4,000	63,000	.	1,23,000	55,000	6,000	14,100	1,43,100	1,200	2,750
North-West Frontier Province	66,000	1,750	5,000	68,000	.	1,09,000	18,000	6,000	14,100	1,12,850	1,200	2,750
Sind	66,000	1,000	4,000	59,000	.	1,09,000	30,000	8,000	17,800	1,19,800	1,200	2,750
Orissa	66,000	2,500	8,000	40,000	.	1,09,000	35,000	6,000	11,500	1,08,000	1,200	2,750

Englishmen to join the I C S It is naturally the keen desire **They are** of the conqueror to maintain a proper level **prize posts** of efficiency in the Government, as much from the point of view of satisfying British interests and needs as for assuring the contentment of the Indian people Englishmen of real merit and ability are required to achieve that object It is felt that the right type of Englishman can be easily persuaded to seek a career in India, if the ultimate prize which he can aspire to attain is big enough to gratify his ambition The Joint Parliamentary Committee strongly dissented from the suggestion that in future Governors should always be appointed from the United Kingdom and that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service They expressed their belief that in the future no less than in the past, men in every way fitted for appointment as Governors will be found among members of the Civil Service who have distinguished themselves in India

However, the practice has given rise to an interesting controversy **Arguments in** It is argued that a person who is to be **'favour of** appointed to the responsible post of the headship **appointing** of a province ought, on all reasonable grounds, **civilians as** to be qualified to hold that office, not only on **Governors** grounds of intelligence or aristocratic connexions or participation in parliamentary affairs but also on account of extensive and varied experience and intimate personal knowledge of his charge These latter qualities cannot be expected to be possessed by a total stranger Further, it is also considered to be a very legitimate aspiration of those who spend a lifetime in a particular sphere that they should have an opportunity to rise to the top The denial of such an opportunity would be unfair and discouraging

On the other hand, it is asserted with equal emphasis that **Arguments** the Governorships or the Viceroyalty are posts hav- **against** ing a unique importance Their occupants have **appointing** to deal with men of diverse aptitudes and with **civilians as** problems of great intricacy, and it is necessary that **Governors** they should be gifted with wide sympathy and imagination A ruler's qualifications cannot be correctly measured only in terms of official standards A bureaucratic mind usually develops a certain rigidity and inflexibility of outlook and becomes impervious to the absorption of new ideas The head of a state, of all persons, ought to be immune from these defects This is given as the justification for selecting men from the public life of Britain rather than from the bureaucracy for the governorships of Bombay, Madras and Bengal and the Viceroyalty of India

After the introduction of provincial autonomy, a further complication arises The administrative machine in the pro-

vince is now entrusted, in a large measure, to responsible Ministers. Even the most highly placed civilian officials have to work in subordination to their authority. As the Governorships of eight provinces are open to the I C S, it may happen that a senior commissioner or secretary who is working under Ministers may find himself suddenly elevated, when a vacancy occurs, to the headship of the province. That was what happened in Orissa in 1938. It would be an untenable position for Ministers to have to accept as their superior and head a person who had been actually working as their subordinate and to whom they had been giving orders as his superiors. To carry on the government under him would cause embarrassment to both the parties and would have a demoralizing effect on the politics of the province.

The Congress Ministry in Orissa took strong objection to the practice and a constitutional crisis was threatened. But ultimately a compromise was arrived at and it is expected that the principle that it established will be followed in all future appointments of civilian Governors. The impropriety involved in placing a bureaucratic subordinate over the head of his ministerial superiors is sought to be avoided by appointing senior civilians of other provinces, and not of the province concerned, to temporary vacancies in the Governor's post.

§2 THREEFOLD CLASSIFICATION OF HIS POWERS

The powers conferred upon the Governor—as also upon the Governor-General as previously explained—by the **The basis of classification** Act of 1935 can be divided into three categories. He has to act (i) in his discretion or (ii) in his individual judgement, or (iii) on the advice of his Ministers who are responsible to the legislature. The matters included in each one of these three categories may pertain to any aspect of the administration. They may be executive, legislative, financial, or may concern the public services, and in fact cover the whole field of government. The classification is not based on an enumeration of different departments. It is made by a definition of the manner in which the Governor is called upon to exercise his authority in the task of governance.

Where the Governor is empowered to act in his discretion, **Powers exercised in his discretion** he is not required to consult his Ministers at all. He can take decisions by himself and give effect to them. To the extent to which provision is made in the Act for the exercise of the Governor's discretionary powers, there is a real diminution of provincial autonomy. Popularly elected Ministers are deliberately precluded from having any voice in this particular sphere. Some of the most vital subjects of provincial administration are brought under the operation of this arrangement. It has been calculated that there

are no less than 32 cases in which the exercise of this power is provided

Where the Governor is empowered to act in the exercise of his individual judgement, he is expected to do so after consultation with his Ministers. This inference can be drawn from the language of the Act and the Instrument of Instructions and also from the amplification contained in the joint Parliamentary Committee's Report. The Governor, of course, is not bound to accept the Ministers' views and can act even in opposition to them. But the procedure of work is so formulated that Ministers can acquaint the Governor with their considered opinions and thereby attempt to influence his decision. Legally, popular Ministers are denied any effective control over the large number of important matters which are assigned to the individual judgement of the Governor. The total number of such cases is calculated to be no less than sixteen in addition to the comprehensive Special Responsibilities. This is another substantial slice cut off from provincial autonomy.

It may be added that both in the exercise of his discretionary powers and in the exercise of his individual judgement the Governor—and also the Governor-General—is not forbidden by law to consult his Ministers or to abide by their advice. If, of his own free will, he decides to take them into his confidence and share his responsibilities with them, there is nothing to prevent him ordinarily from doing so. In fact, that is the constitutional course which he may normally be expected to follow. The establishment of such precedents is strongly advocated and eagerly looked forward to by politicians both British and Indian. They would appreciably broaden the scope of ministerial, and therefore popular, authority and dissipate the shadow cast by special powers and safeguards. It is generally believed that a practice of this nature has been set up, in a larger or smaller measure, in most of the provinces.

However, there is one serious danger of encroachment on this negative liberty which a sympathetic Governor may try to utilize for the positive purpose of building up healthy conventions. It is explicitly laid down in section 54 that when the Governor acts in his discretion or in the exercise of his individual judgement, he will be under the general control of the Governor-General and will have to comply with such particular directions as may be issued by the latter in his discretion. So that, if in an exceptional instance, a constitutionally-minded Governor voluntarily chooses to consult his Ministers and to act on their advice even in respect of matters which are reserved for his discretion or for his individual judgement, his action may be hampered by orders issued by the

superior authority of the Governor-General or ultimately of the Secretary of State. The British Premier's reply to Mr Churchill, referred to in an earlier section,¹ reiterated this constitutional position.

The third category consists of items in which the Governor has to act on the advice of his Ministers. And as the latter are members of the legislature and responsible to it, the concept of provincial autonomy may be supposed to be tangibly represented by and in this particular domain. The Instrument of Instructions definitely lays down that in all matters within the scope of the executive authority of the province, save in relation to functions which are to be exercised in his discretion, the Governor will be guided by the advice of his Ministers. But to be so guided ought not to prove inconsistent with the fulfilment of any of his Special Responsibilities or with the proper discharge of those functions which have to be performed in the exercise of his individual judgement. Whenever they are involved the Governor is instructed to act in the manner in which he thinks it proper to act, notwithstanding the advice of his Ministers. But the Ministers should not be enabled to rely upon his Special Responsibilities in order to relieve themselves of responsibilities which are properly their own.

However, it must be noted that the Governor is not excluded from the provincial Cabinet as his master, the King of England, is excluded from the British Cabinet. He is empowered not only to be present at meetings of the Council of Ministers but also to preside over them. He can urge his own views and argue his own points. His participation in the debates is bound to have a considerable effect in shaping the Minister's attitude with regard to the general policy of government and the disposal of specific questions. His influence will be particularly effective when there are no strongly organized political parties in the province to undertake the formation of responsible Ministries. It is a truism of constitutional science that the presence of the head of the government at Cabinet meetings inevitably tends to prevent the growth of a homogeneous Cabinet and of the principle of joint responsibility. It is of course presumed that even if the Governor does not see eye to eye with the ministers and actually dissents from their opinions, he will allow them to have their own way and not override their decisions.

§3 RELATIONS TO MINISTERS AND EXECUTIVE POWERS

Section 49 of the Act lays down that the executive authority of a province will be exercised on behalf of His Majesty by

¹ See p. 81

the Governor. Section 50 lays down that the Governor will have a Council of Ministers to aid and advise him in the exercise of his functions, excepting in so far as he is required by the Act to exercise his functions in his discretion. He is also not prevented from exercising his individual judgement when under the Act he is required to do so. Thus there is no obligation to consult Ministers in the former sphere, there is no obligation to carry out their advice in the latter sphere even though it may be sought and given.

Ministers have to be chosen and summoned by the Governor in his discretion and they can be similarly dismissed by him. It is directed in the Instrument of Instructions to the Governor that he should use his best endeavour 'to select his Ministers in the following manner, that is to say, to appoint, in consultation with the person who in his judgement is most likely to command a stable majority in the legislature, those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.' He must therefore send for the leader of the largest political party in the legislature and ask him to form a Ministry.

Before the introduction of provincial autonomy and the system of government by popular Ministries which are responsible to the legislature, the Governor used to summon, as a matter of normal official routine, the secretary to Government in every department and to obtain from him information about every important administrative matter. He could thus keep himself acquainted with the detailed operation of the executive machine and take an active part in its day-to-day direction. The secretaries, who were the subordinates of Executive Councilors or Ministers, had the privilege of direct access to the superior of their superiors and of discussing administrative affairs with the head of the government behind their backs.

Whatever may have been the justification for such a system when the government was almost entirely bureaucratic, it could obviously have no reason to exist after the transfer of power into the hands of the representatives of the people. In a parliamentary government the supreme executive authority must vest in the Ministers. Even the Joint Parliamentary Committee admitted that 'if it is to be the Council of Ministers who will in future aid and advise the Governor, it is plain that the Governor can no longer be advised directly and independently by the secretaries to government.' But as even after the Act of 1935

the Governor will continue to have not merely nominal but very real administrative powers, particularly in reference to safeguards and Special Responsibilities, it was not considered feasible to deprive him of the means of getting information about the working of the administrative machine. The necessary provision was therefore made in the Act by section 59.

The Governor, in his discretion, may preside over meetings of the Council of Ministers. He has also, in his discretion but after consultation with the Ministers, to make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of portfolios to Ministers. In order that he should not be ignorant of the happenings in the various departments, the above rules shall include provisions requiring a Minister to transmit to the Governor, and the appropriate secretary to Government to bring to the notice of the Minister concerned and the Governor, all important information concerning the business of the Provincial Government and particularly those matters which involve the Governor's Special Responsibilities. Thus Ministers will not be left completely in the dark about what their subordinates, the secretaries, have communicated to the Governor. The Governor will of course be in close touch with the course of provincial administration from day to day and will be able to influence its general trend as well as its details.

In the system of responsible government, the head of the state does not remain present at and actively participate in the meetings of the Cabinet. The Prime Minister, who is the leader of his colleagues, of his party and of the nation generally for the time being, presides over Cabinet meetings, controls the work of Ministers, and as the elected representative of the people bears the whole burden of policy and governance on his shoulders. If the autonomous Indian provinces are to develop along the same lines, the Governors ought to withdraw from Cabinet discussions.

It may be pointed out that the Act of 1935 does not make it obligatory on them to preside over Cabinet meetings, it is left to their discretion. They can therefore voluntarily remain absent from them and leave all initiative and leadership to the Prime Minister. That would be a logical corollary of the new constitutional position. Probably the practice is being partially adopted in all the provinces, though exactly to what extent is not known.

It must be repeated that as this is a region for the exercise of the discretionary powers of the Governor, he is subject to the orders and directions that may be given to him by the Governor-General and ultimately by the Secretary of State. The growth of particular conventions will therefore be considerably influenced

by those authorities. They can help or hinder that process according to their inclinations.

In the scheme of provincial autonomy, the subject of law and order is entrusted to the authority of a Minister. However, Parliament was not prepared to transfer into the hands of Indians the same amount of power in respect of this subject that it was willing to concede in others. It was considered risky to allow Indian Ministers to have unfettered sway over the Police Department, and it was therefore decided to bring it under the Governor's closer supervision. This has been done by sections 56-8 of the Act. In making, amending, or approving any rules, regulations, or orders relating to any police force, whether civil or military, the Governor is required to exercise his individual judgement. For combating crimes of violence which are intended to overthrow the Government, the Governor has been given special power 'to assume charge, to such extent as he may think requisite, of any branch of government' and to act in his discretion in administering it. He can also, in his discretion, make rules for securing that the sources of information with reference to such crimes shall not be disclosed by any member of the police force except in accordance with the direction of the Inspector General of Police or the Commissioner of Police, or by any other person in the service of the Crown except in accordance with the directions of the Governor in his discretion.

It is one of the primary principles of the Act of 1935 that the superior Services should be kept beyond the reach of the Indian legislature. The Governor has a Special Responsibility in respect of the public services and the Instrument of Instructions further amplifies it by stating that he must be careful to safeguard the members of the Services not only in any rights provided for them by or under the law but also against any action which in his judgement would be inequitable. This constitutes of course a very general supervisory power which may interfere with the orders issued by a Minister. Even in the operation of provincial autonomy, the Ministers and legislatures have no control over officials in the Indian Civil Service, the Indian Police Service and others appointed for the province by the Secretary of State, though their salaries are charged on the provincial revenues.

Certain posts are reserved for persons chosen by the Secretary of State. The Governor, in his individual judgement, has to determine the appointments to these posts, transfers, any promotions of the persons holding them, any order relating to their leave if it exceeds three months, and any order suspending them. No order which punishes or formally censures any such person or affects adversely his emoluments or pension can be made, if he

is serving in a province, except by the Governor exercising his individual judgement. Appointments of District Judges in a province and their postings and promotions have to be made by the Governor exercising his individual judgement. He has also in his discretion to appoint the chairman and other members of the Provincial Public Service Commission and to make regulations regarding their number, their tenure of office and conditions of service. It will be easily seen from this multiplicity of powers how even in the normal routine of purely administrative matters, the Governor has been placed in a position of unquestioned supremacy.

The Governor has to appoint, in the exercise of his individual judgement an Advocate-General for the province.

Appointment of an Advocate-General He must possess the same qualifications as are required for being appointed a high court judge, is to hold office during the pleasure of the Governor, and receive such remuneration as the latter in the exercise of his individual judgement may determine. It is the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor. This provision has been made in section 55. Ministers will naturally prefer to have a legal adviser in whom they have full confidence, and the Governor in making the appointment of the Advocate-General is expected normally to be guided by their advice. But the convention has not been uniformly established that the Advocate-General should, or should be called upon by the Governor to, resign his post along with the Ministry. It was followed in Bombay when the Congress Ministry was formed in 1937, but was not similarly followed at that very time in the Central Provinces and Berar. Even in Bombay the Advocate-General did not resign when the Congress Ministry gave up office in November 1939.

§4 RELATIONS TO THE LEGISLATURE AND LEGISLATIVE POWERS

The Governor's powers in respect of the legislative chambers and the Bills proposed to be introduced in and passed by them are mentioned in several different sections of the Act¹. The Governor in his discretion can summon the legislative chambers or chamber in a province, can prorogue them and can dissolve the lower house. However, as the conduct of government, including legislation, is entrusted to responsible ministers, this power will have to be exercised in a manner which will suit their convenience. The initiative and decisions in this

Summoning, proroguing, and dissolving the Legislature; assent to Bills

¹ See sections 62, 63, 74, 75, 76, 84, 86, 106

respect will therefore automatically tend to lie more with the Prime Minister than with the Governor. Similarly, the Governor can address either chamber singly or both together. He can, in his discretion, send messages to the legislature in regard to a pending Bill or for any other purpose. Whenever there is disagreement between the two chambers in provinces where the bicameral system has been instituted, the Governor, in his discretion, has to summon a Joint Sitting to remove the deadlock. His assent, given in his discretion, is required for any Bill passed by the provincial legislature. He may withhold that assent or reserve the Bill for the consideration of the Governor-General. He may also return it to the legislature with a message that it should be reconsidered.

The Governor in his discretion but after consultation with the Speaker or President has to make rules for regulating the procedure and conduct of business in the legislature (i) in relation to matters which affect the discharge of those of his functions which have to be performed in his discretion or in his individual judgement, (ii) for securing the timely completion of financial business, (iii) for prohibiting the discussion of or the asking of questions on matters connected with Indian States, and (iv) for prohibiting, save with the consent of the Governor in his discretion, the discussion or asking of questions on foreign affairs, administration of Tribal and Excluded Areas and the personal conduct of the Ruler of an Indian State or his family. Twenty-nine such rules, called the Bombay Legislative Chambers (Governor's) Rules, have been framed for Bombay. In a province where there are two chambers, the Governor, after consultation with the President and the Speaker, has to make rules for fixing the procedure of their Joint Sitzings.

If the Governor in his discretion certifies that the discussion of a Bill or clause or amendment introduced or proposed to be introduced in the legislature would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace and tranquillity of the province, he may in his discretion direct that no proceedings shall be taken in relation to the Bill, clause or amendment. This is an important reserve power which can be used against legislation introduced on the initiative of responsible Ministers.

Unless the Governor in his discretion thinks fit to give his previous sanction necessary in certain cases, no Bill or amendment can be introduced in the provincial legislature if (i) it seeks to repeal or to amend or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor, (ii) it seeks to repeal or to amend or to affect any Act relating to any police force.

Till the Act of 1935, the Governors had no power to promulgate ordinances. It was vested exclusively in the Governor-General, who could issue ordinances for a province. In consistence with their new status as heads of federal units, that power has now been conferred upon the Governors. Two types of ordinances have been provided for. In one, the promulgation will be made on the advice of Ministers or, in certain cases, in the exercise of the Governor's individual judgement, if, at any time when the legislature is not in session, the Governor is satisfied that immediate action is necessary. Such an ordinance issued under section 88 of the Act must be laid before the provincial legislature and will cease to operate at the expiration of six weeks from the reassembly of the legislature or on an adverse resolution passed by that body. The Madras Temple Entry Indemnity Ordinance and the Bombay Fodder and Gram Control Ordinance were issued in 1939 on the advice of the respective Ministries in accordance with this provision.

The other type of ordinance, mentioned in section 89, is of a more absolute character. It is at any time—in his discretion—that is, whether the legislature is in session or not—the Governor is satisfied that immediate action is necessary for the discharge of those of his functions which have to be performed in his discretion or in the exercise of his individual judgement, he may promulgate an ordinance as he thinks fit to do. It need not be laid before the provincial legislature at any time and can continue to be in operation for a maximum period of six months at a stretch, to be followed by a further extension not exceeding six months if found necessary.

The Montford Reforms had created a new weapon for use by the Governor-General and the Governor. It was called the power of Certification. The Act of 1935 has not only retained that instrument of absolutism but made it much simpler to operate. The process of certification required that a Bill should first go to the legislature, should be rejected by it and then should be certified by the Governor into an Act. In the new system, even the semblance of consultation with or consideration by the legislature may be dispensed with. The position is made quite clear by section 90 of the Act, and also by the comments of the Joint Parliamentary Committee:

It is laid down that if at any time it appears to the Governor that certain legislation is necessary for the discharge of those of his functions which have to be performed in his discretion or in his individual judgement, he can adopt one of two courses. (i) he may enact forthwith a Governor's Act containing such provisions as he considers necessary, or (ii) he may send to the legislature the draft of

a Bill which he considers necessary. In the latter case, the legislature may present an address to the Governor, within a period of one month expressing its opinion on the Bill. He may thereafter pass it into a Governor's Act, either with such amendments as he deems necessary or in its original form.

These Governor's Acts have the same force and effect as Acts passed by the Provincial legislature. However, they have to be communicated through the Governor-General to the Secretary of State and put before each House of Parliament by him. A single mortal head of a Provincial Government is thus enabled, in the plenitude of his wisdom and authority, to defy the collective opinion of scores of elected representatives who constitute the legislature of the province. Even as an extraordinary provision, it suggests an incongruous despotism in the picture of what is alleged to be full provincial autonomy.

35 FINANCIAL POWERS

The Governor has considerable powers in matters of finance.¹ **Causing the budget to be prepared** It is his duty to see that for every financial year a budget is prepared for the province and laid before its legislature. The statement must show separately items on which that body will be called upon to vote expenditure and items whose expenditure is charged on provincial revenues. The question whether a particular item is or is not included in the latter category has to be decided by the Governor in his discretion.

Power to restore cuts in the votable items In respect of the votable portion of the budget, the Legislative Assembly of the province can assent to, refuse, or reduce any demand. But it, in the opinion of the Governor, the refusal or reduction of any such grant would affect the due discharge of any of his Special Responsibilities, he can restore, wholly or partly, the cuts that may have been made by the Assembly. This is also a pernicious reproduction of the old power of certification. No demand for a grant can be made except on the recommendation of the Governor. The Governor has to authenticate by his signature a schedule signifying (1) the grants made by the Assembly in the votable part of the budget, including the cuts restored by him if any, and (2) sums required for expenditure charged on the revenues of the province. No expenditure from the revenues of a province is deemed to be duly authorized unless it is specified in the schedule so authenticated.

¹ See sections 78-82 of the Act.

Bills or amendments on the following subjects cannot be introduced in the provincial legislature except on the recommendation of the Governor (i) for imposing or increasing any tax, (ii) for regulating the borrowing of money or the giving of any guarantee by the province, (iii) for declaring any expenditure to be expenditure charged on the revenues of a province or for increasing the amount of any such expenditure .

§6 SPECIAL RESPONSIBILITIES

The Act of 1935 is full of many reservations and safeguards. The policy of the Act The grant of political power has been invariably accompanied by certain restrictions or other counteracting provisions which minimize the extent of the grant. In pursuance of that policy, a new class of obligations has been created under the constitution. They are known as the Special Responsibilities of the Governor-General¹ and the Governor, and those high officials are required to fulfil them in the exercise of their individual judgement.

The following list has been enumerated for the Governor in section 52 (i) The prevention of any grave menace to the peace and tranquillity of the province, (ii) the safeguarding of the legitimate interests of the minorities, (iii) securing the rights and the legitimate interests of the Services, (iv) the prevention of any kind of discrimination against British citizens in the sphere of executive action, (v) securing the peace and good government of the Partially Excluded Areas, (vi) protection of the rights of any Indian States and the rights and dignity of their rulers, (vii) securing the execution of the orders and directions issued by the Governor-General in his discretion.

The Governor of the Central Provinces and Berar has also the Special Responsibility of securing that a reasonable share of the revenues of the province is expended in or for the benefit of Berar. The Governor of Sind has the Special Responsibility of securing the proper administration of the Lloyd Barge and Canals Scheme.

It will be easily seen that the object of defining these Special Responsibilities is not merely to set aside a distinct group of departments for the personal management and attention of the Governor. They do not attempt to introduce a division of the Provincial Government into two sections, one handed over to the Ministers in which they can have complete freedom, and the other retained and reserved for the Governor. In fact, they

¹ See pp 194-5

are generic in their conception and can be interpreted to apply to the whole sphere of the Provincial Government

For instance, as the Joint Parliamentary Committee has **illustrations** emphasized, the peace and tranquillity of a province may be believed to be endangered by what may be construed to be the undesirable activities of any department of state. Similarly, the minorities and the Services are inevitably present in every aspect of administration. The possibility of discrimination against British citizens in any manner can also exist in every subject. The range of the Governor's supervision and the scope for his superior action are therefore extremely comprehensive.

Further, it must be realized that the terms 'grave menace', **Vague expressions** 'legitimate interests', 'discrimination', 'peace', 'rights', 'dignity', etc., are very vague and elastic. According to the viewpoint and interest of the user, they can be made to yield a meaning of different degrees of intensity and application. A Governor who is fond of power would find them to be convenient excuses for interference. By putting a wide construction on all their implications, he could constantly encroach on the work of responsible Ministers.

§7 EMERGENCY POWERS

In the working of the parliamentary system in Britain, a **Rise of an emergency** constitutional crisis would lead either to the resignation of Ministers or to the dissolution of Parliament, and the dispute is ultimately settled by the verdict of the electorate. There may be brought about a change, but not a paralysis, of government. But the position in India is different. The Act of 1935 and the constitutional structure that it creates are essentially based on the doctrine of self-government with safeguards. They leave the ultimate authority over India in many important respects in the hands of the British people.

The possibility of a grave conflict is inherent in such a **Deadlock in government** situation. The Governor representing the British Parliament may disagree with his responsible Ministers and the provincial legislatures on some crucial issues, and neither the public opinion in Britain nor the public opinion in India may be in a mood to yield. The majority party in the provincial legislatures may then refuse to form a Ministry and may not allow others to form it. There would thus be a complete deadlock, and the machinery of government as provided for in the Act would fail to operate. All administration would be threatened with stoppage.

The Act has made special provisions to meet abnormal situations of this type. Section 93 empowers the **Issue of proclamations** Governor to issue a Proclamation if at any time he is satisfied that a situation has arisen in which the govern-

ment of the province cannot be carried on in accordance with the provisions of the Act. By such a Proclamation the Governor may (i) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion, and (ii) assume all or any of the powers vested in or exercisable by any provincial body or authority. The Proclamation may contain all such incidental and consequential provisions as may be necessary, and may suspend, in whole or in part, the operation of any provision of the Act relating to any provincial body or authority, except the High Courts.

Such a Proclamation has to be communicated forthwith to the Secretary of State and to be laid by him before each House of Parliament. It must cease to operate at the end of six months after it is issued, unless allowed to be further continued by resolutions of Parliament. In no case, however, can it remain in force for a period of more than three years.

If by such a Proclamation the Governor has assumed to himself any power of the provincial legislature to make laws, a law made by him in the exercise of this power will continue to have effect for a period of two years after the Proclamation has ceased to have effect. However, even before this period has elapsed such a law made by the Governor may be repealed or re-enacted by the provincial legislature.

This law-making power is not to be confounded with the power, vested in the Governor by section 90, to enact what are known as Governor's Acts.¹ These measures have no statutory limit on their duration and can be issued even in normal times when the constitution of the province is still functioning.

A Proclamation of this kind has to be issued by the Governor in his discretion and with the concurrence of the Governor-General, given in his discretion. It may be revoked or varied by a subsequent Proclamation. Thus all the executive and legislative work in the province can be temporarily taken over by the Governor directly, and the wheels of the administrative machinery can continue to be moved by his driving force, till normal conditions are restored.

Within less than three years of the introduction of provincial autonomy, the Governors of eight provinces—Bengal, the Punjab and Sind were the exceptions—were unexpectedly called upon to exercise this emergency power, and to suspend the normal working of the provincial constitution. The British Government's declaration of their war aims, particularly with

**Suspension
of the
constitution
in eight
provinces**

**Concurrence of
the Governor-
General
necessary**

¹ See p. 286

reference to India's right of self-determination, was considered to be unsatisfactory by the Indian National Congress, and in pursuance of the mandate issued by that body the Congress Ministries resigned their posts early in November 1939. As the Congress party held a majority of seats in the legislatures of eight provinces, the formation of alternative Ministries in them was impossible. Even the dissolution of the legislatures would not have changed their political complexion, and matters would not have improved.

In these exceptional circumstances, the Proclamation authorized by section 93 was issued by the Governors **Appointment of Advisers to the Governor** concerned with the previous concurrence of the Governor-General, and from the first week of November 1939 all powers of government within their respective territorial zones were assumed by them. Up to 1946, the administration of these provinces was carried on by the Governor with the assistance of Advisers, either two or three in number, who were specially appointed by him. They were not selected from non-official politicians but were senior members of the ICS serving in the province. There had thus been a complete reversion to bureaucratic rule. In Assam, a new Ministry came into office as a result of the reshuffling of the political groups in its legislature but it could not last long.

As the period of six months since the issue of the Proclamations of Emergency by the Governors in November 1939 was coming to an end and as no solution of the political crisis in India was in sight, both the Houses of Parliament passed in April 1940 Resolutions permitting the continuance of the Proclamations for a term of not more than twelve months. Similar Resolutions were further passed in 1941 and 1942.

The Governor of Bombay took over the government of the province by a Proclamation issued in the beginning of November 1939. In the exercise of the powers which were thus assumed he thought it necessary to enact a Governor's Act in April 1940. The Congress Ministry while in office had initiated the policy of prohibition, and certain regulations and notifications had been issued by the Government under the Abkari Act for the purpose of implementing that policy and preventing people from being in possession of liquors and intoxicating drugs. But a Special Bench of the Bombay High Court decided, after hearing certain appeals that were referred to it, that such notifications and regulations were *ultra vires* and could not have legal effect. The decision would have had the result of frustrating a policy which had been inaugurated by responsible Ministers with the full support of a democratically elected legislature, and this too at a time when those bodies had ceased to function and could not therefore take prompt and effective measures to safeguard the reform.

The Governor also felt that the ruling of the High Court would create administrative chaos because it would apply to a part of the regulations and would leave other parts untouched.

He therefore enacted a Governor's Act to make the necessary amendments in the Abkari Act so that dislocation of the administration of excise policy could be avoided. The Act also indemnified all officers for actions taken by them in good faith before the decision of the High Court. The experiment of prohibition was thus kept alive and saved from an abrupt and unforeseen wreckage, and the step taken by the Governor was highly commended. It must be remembered that this Governor's Act was not enacted under section 90,¹ but under powers obtained in virtue of section 93.

§8 INSTRUMENT OF INSTRUCTIONS

The Joint Parliamentary Committee expressed the opinion that the adoption of the English constitutional form need not imply the establishment in each province of a system analogous in all respects to that which prevails in England. Constitutional usages and practice which may be eminently adapted to the circumstances of Britain may be found unsuitable to Indian conditions. India's political development must be in harmony with her own traditions and circumstances. It must also be marked by a flexibility and capacity for adjustment which would make continuous progress possible without any alteration in the existing form of government.

The Dominion and Colonial constitutions have followed the British model. The Committee has pointed out how those who framed them had recourse to the device of what is known as the Instrument of Instructions in order to impart the necessary flexibility to their working. Apart from the specific obligations imposed by a parliamentary Act the Instrument indicated to the Governor-General or Governor how far he should regard himself bound by English precedent and analogy. It preserved a sphere in which constitutional evolution might continue without involving any change in the legal framework of the constitution itself.

It was recommended that Instruments of Instructions might similarly be issued to the Governor-General and Governors in India. They should amplify the meaning and spirit of some of the provisions of the Act, particularly those that define the powers, responsibilities and duties assigned to and imposed on those high officials, and lay down particular practices and procedure. That would help to give flesh and blood to the legal skeleton of the constitution and to mould its living shape.

The Joint Parliamentary Committee also explained that the Instrument would have vital importance in the evolution of the new Indian constitution. For example, Ministers have no constitutional right, under the Act, to tender advice to the Governor upon matters which are placed in the Governor's discretion, though he could and often would consult them. If at some future time it seemed that this power of consultation might be made mandatory and not permissive, the Committee think that there would be nothing inconsistent with the Act in an amendment of the Instrument for such a purpose.

The Instrument of Instructions was intended to serve two purposes. It could clarify certain constitutional injunctions contained in the Act and prescribe usages and conventions to be followed in certain important matters. The Instrument could also be utilized to stimulate constitutional progress without introducing any structural change in the Act.

Section 53 lays down the procedure for the issue of an Instrument of Instructions to the provincial Governor (and section 13 to the Governor-General). It is issued by His Majesty, but the draft is prepared by the Secretary of State and approved of by both Houses of Parliament. Amendments to the Instructions previously issued have also to be approved by Parliament. The authority of that body in determining the stages of the political progress of India even by such an indirect method is fully asserted.

The Instructions are intended to guide the Governor and he is expected to carry them out. However, the Instrument has not the same validity as a law, and no action can be declared illegal on the ground that it did not accord with the Instrument of Instructions. There are twenty-one clauses of the Instrument that was issued soon after the Act of 1935 was passed and they refer to matters concerning the executive authority of the province and the legislature.

The following is a brief summary.

A INTRODUCTION

I-VI These clauses lay down the procedure for the taking and administering of oaths and also require that the Governor shall not quit India without obtaining leave.

B IN REGARD TO THE EXECUTIVE AUTHORITY

VII Ministers should be appointed in consultation with the person who is most likely to command a stable majority in the legislature. As far as practicable they should include members of the important minority communities. A sense of joint responsibility should be fostered among them and they should be in a position collectively to command the confidence of the legislature.

VIII The Governor should be guided by the advice of his

Ministers except when he is required to act in his discretion or in his individual judgement. But the Ministers should not be enabled to rely upon his Special Responsibilities in order to relieve themselves of their own

IX The minorities mentioned in the Act are racial and religious and not political. The Governor has to secure a due proportion of appointments in the Services to the different communities

X The Services are to be safeguarded from any inequitable executive action, in addition to the protection of the rights guaranteed to them

XI Discrimination against British interests of any kind is to be prevented, even if it means differing from the Ministers

XII Ministers should not be allowed to take action which would imperil the economic life of any Indian State, and affect prejudicially any of its rights

XII (a) The Governor of Berar has to pay due regard to the commercial and economic interests of the Hyderabad State

XIII Rules of business should be so framed that the Finance Minister should be consulted upon all proposals that affect the finance of the province, and reappropriations within a grant

XIV The Governor should keep himself well informed about the conduct of irrigation in his province

XV The Governor may appoint an officer for the Excluded or Partially Excluded Areas within his charge

XV (a) The Governor of the North-West Frontier Province should be particularly careful about his duties in regard to the Tribal Areas

C MATTERS AFFECTING LEGISLATURES

XVI In giving assent to or withholding it from Bills, the Governor should pay particular regard to his Special Responsibilities

XVII The following Bills or clauses will have to be reserved for the consideration of the Governor-General

1 If it repeals or is repugnant to an Act of Parliament

2 If it derogates from the power of a High Court

3 If it creates a doubt that it offends against the purposes of Chapter 3, Part V of the Act in respect of discrimination against British interests

4 If it alters the character of the Permanent Settlement in Bengal and other areas. However the Governor's previous sanction to the introduction of a Bill on this subject is not to be refused

XVII (a) The Nizam's assent is to be stated in respect of Bills that apply to Berar

XVIII Proceedings on a Bill or amendment should be stayed only if its public discussion itself would endanger peace and tranquillity

XIX. Nominations to the Legislative Council should be made to redress inequalities and to secure representation to women and the scheduled castes

D GENERAL

XX The Governor should try to maintain standards of good administration, to promote moral, social and economic welfare, to secure among all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments, etc

XXI These Instructions should be communicated to Ministers and also published in the province

APPENDIX

This contains forms of the oath of allegiance, the oath of office and the oath of secrecy for Ministers

§9 SECRETARIAL STAFF OF THE GOVERNOR

It will be easily realized from the foregoing description that the Governor is not merely a titular head of the province, but is required to perform a large number of duties and play an active part in the administration of the province. It is therefore considered essential that he should have at his disposal an adequate personal and secretarial staff to assist him in the fulfilment of his obligations. Accordingly, section 305 of the Act provides that every Governor (and also the Governor-General) shall have his own secretarial staff, appointed by him in his discretion. The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them are to be determined by the Governor in his discretion. All the expenses incurred in this connexion are charged on the revenues of the province and are therefore non-votable by the legislature.

The Joint Parliamentary Committee suggested that at the head of this staff there should be a capable and experienced officer of high standing. He should be fully conversant with the current affairs of the province and in close contact with the administration. However, the Committee did not contemplate that he should be a kind of Deputy-Governor. In their view his duties would vary from time to time as constitutional usage and practice grew. In some respects he would occupy the position formerly filled by the Governor's Private Secretary, but would have duties of a wider and more responsible character. The Committee recommended that he should be designated as Secretary to the Governor, and the recommendation has been carried out. Every Governor has now such a Secretary, who is a fairly senior member of the I C S serving in the province.

§10 IMPORTANCE OF THE OFFICE

The cumulative effect of all these powers, normal and special, ordinary and extraordinary, legislative, executive, and financial, is to make the position of the Governor extremely formidable, if not invincible, in the working of the Provincial Government, at least in the strictly legal interpretation of the constitution. By no stretch of imagination can he be described, nor is he intended to be, a mere constitutional head, a dignified ornament which shines with light but is without life. Even in what is advertised to be provincial autonomy, he can prove to be a decisive force. In actual practice, however, the Governors do not seem to have attempted to impose their will upon the popular Ministries by threatening to exercise their legal powers. It is hoped that this healthy convention of non-interference will help to set up real democracies in the Indian provinces.

Even in a free country, such a dominant position of the *de jure* head of the state would be incompatible with the principle of ministerial responsibility. In a conquering power the situation becomes worse, because the Governor is also the representative of the sovereign masters. He is specially commissioned to be the custodian of their interests and is not therefore divested of his active constitutional authority.

XXXIV. THE PROVINCIAL EXECUTIVE THE COUNCIL OF MINISTERS

§1 APPOINTMENT

DEMOCRACY is a form of government where the people govern themselves. There are different types of democracy. In a country like England it works on what is described as the parliamentary principle. The people are fully represented in the legislature which is elected by adult suffrage, and the leaders of such a legislature are invested with executive direction and authority. They become Ministers of the state and direct its affairs as long as the majority of the legislature and the nation has confidence in them. In the last resort therefore the people make and control their government.

The Indian polity has also to be shaped in accordance with the ideals of democracy and preferably of the parliamentary or responsible type. The introduction of provincial autonomy is supposed to be a step in that direction. Therefore the pertinent questions to be asked are, is there a popularly elected legislature in the province, and is the provincial executive created by and entirely subordinate to it? To the extent to which these questions can be answered in the affirmative, the autonomy can be said to be real. The position of the Council of Ministers has to be examined in the light of the final goal of responsible democracy.

Under the Act of 1935, the Ministers have to be chosen and summoned by the Governor in his discretion and they are to hold office during his pleasure. They must of course be members of the provincial legislature, and if any one of them is not so at the time of his selection, he must find a seat for himself within six months of his appointment as Minister. It may be inferred from the Instrument of Instructions that the constitutional practice which is associated with Cabinet formation in responsible governments is to be adopted in India. The Governor has to send for the leader of the largest party in the legislature and entrust him with the task of forming a Ministry. The leader may accept the invitation and suggest names of his political comrades for the different portfolios. The Governor accepts the list and the Ministry is then installed in office.

If such a practice is scrupulously and rigidly followed, the selection of Ministers, though legally vested in the Governor, will in effect, be made by the people. That in fact is the essence of parliamentary government and the genuinely democratic principle that it embodies. There are different political

parties in the country, each having its own organization and a recognized leader as its head. Each party has its own policy and programme which is submitted for the verdict of the final masters—the electors. That party which is successful in capturing the largest number of seats in a general election can be said to be the favourite of the country. It may be taken to have received a mandate from the people to carry out its policy and programme. Even the Governor has to submit to the decision of the nation and call upon the authorized leader of the largest political group to shoulder the burden of the administration.

However, one serious difficulty may arise in the proper operation of such a salutary system. The Governor is enjoined to see that, so far as is practicable, members of important minority communities are included in the Ministry. Now it may happen that the largest party in the legislature has no member who belongs to the minority communities. Or even if there are such members in its ranks, the leader of the party may not think it feasible to elevate them to the Cabinet on account of their inexperience or for some other reason. Would the Governor, under these conditions, endeavour to impose some other man upon the party which is entitled to be in power on account of its numerical strength? Can he insist on saying that a place must be found for a stranger in the party counsels? Would the formation of a Ministry be impeded as a result of such a conflict?

The answer will depend on the nature of a particular situation. If a party has an overwhelming or an absolute majority in the legislature and if its discipline is perfect, the Governor dare not carry his insistence to extremes, because thereby he will invite trouble. With a militant majority in constitutional opposition the normal work of government would come to a standstill. Nor could emergency powers be invoked to resolve such a minor impasse. To do so would outrage all sense of proportion. The language of the Instruction itself is guarded. It contains the important saving clause 'so far as is practicable'. No sensible Governor would precipitate a crisis in the face of such a clear declaration, though the word 'practicable' may be twisted somewhat to yield a required meaning.

Where even the largest political party does not command an absolute majority in the legislature, the Ministry will be in the nature of a coalition of different groups. In such a weak state of organized politics within the province, the Governor can certainly exercise a good deal of personal influence. There is no fear of a solid bloc effectively obstructing his will by

going into opposition, because even the biggest bloc does not make a majority. By the exercise of skill in his negotiations and conversations, the Governor could in these circumstances succeed in getting the Ministry he wanted

The experience of the working of provincial autonomy during the last five years shows that the method of **Convention actually followed by the Governors** appointing Ministers described in the foregoing paragraphs has been almost invariably followed. After elections to the new legislatures were held in the early months of 1937 and the results of those elections were known, the Governor of every province, with the solitary exception of the North-West Frontier Province, summoned the leader of that party which had secured a majority, or the largest number, of seats in the legislature of the province, and asked him to form a Ministry. It was only when the invitation was declined by the Congress leaders that interim Ministries were allowed to be formed, as a stop-gap arrangement, by members of the minority parties in the six provinces in which the Congress party had a clear majority.

Four months later, when the Congress decided to accept office, the leader of that party in the provincial legislature was entrusted with the task of forming the Government and of choosing his own colleagues for that purpose. The names submitted by the leader, who naturally became the Prime Minister, are known to have been always accepted by the Governor. The question of giving representation in the Ministry to the Muslim minority proved to be rather difficult. The Congress decided as a matter of policy that only such Muslims could be included in its Ministry as were prepared to become members of the Congress and to abide by its discipline and mandates. The Muslim League, which held the majority of Muslim seats in the provincial legislatures, refused to agree to this condition, and its members were therefore excluded from the Cabinets. The Congress party selected some of its own Muslim members to hold office as Ministers.

The Muslim League has since been contending that such **The attitude of the Governors** Muslim Ministers are not really the representatives of the Muslim community, because they have not the support of the majority of the Muslim members of the legislature. On the other hand, the Congress party, in the interest of the solidarity of its organization, is not willing to allow those who are not in its ranks to occupy the responsible post of Minister as long as the direction of government is in its hands. Appeals were made to the Governors concerned against this attitude, but they have not interfered with the arrangements proposed by the party which commands the confidence of the majority of the legislature as a whole. No instance has yet.

occurred of a Governor endeavouring to inflict upon a party a Minister whom it was not prepared to accept.

§2 QUALIFICATIONS, TENURE AND SALARY

The qualifications of a Minister are not prescribed in the Act, nor could they be so prescribed, except for the requirement that he must be a member of the provincial legislature. It is not laid down that he must be an elected and not a nominated member or that he must belong to the lower and not to the upper chamber. A nominated member of the latter body can therefore be included in the Council of Ministers.

It is obvious that a Ministry will be composed of prominent and leading members of a political party. **A Minister must be a member of the legislature** He is usually a leading member of a political party. dually, almost every one of them must enjoy at least that degree of popularity in the country which enables him to get elected to the legislature from one constituency or another. In the party organization, he must stand in the front rank. That implies that he must be known to be endowed with the gifts of intelligence, industry and character which mark him out for responsibility and distinction.

Indeed, the test is not passed merely by a brilliant university career, though it may count as a valuable asset. **The qualities he is expected to possess** Several Ministers of England, for instance, have possessed an excellent academic record and have been known for their scholarship and learning, though there are also others who have never secured a university degree. An innate aptitude and love for public life and keen political ambition are the qualities essential in a Minister. He need not have the specialized training of an administrator or a bureaucrat, but he must be gifted with robust common sense, quick grasp and sympathetic understanding and a capacity to appeal to the imagination of the people and carry them with him. He should be a man of ideas and possess the qualities of a thinker. It is not necessary that he should be an expert in the narrow sense, but he must be able to appreciate the services of experts and to assimilate the fruits of their long experience and labour. A Minister may not himself actually operate the administrative engine, but he is certainly expected to regulate the direction and speed of its journey.

Technically speaking, a Minister holds office during the pleasure of the Governor and may be dismissed at **No fixed tenure of office** his discretion. This is however a purely theoretical position. In the parliamentary system, a Minister is really the servant of the legislature and the electorate, and cannot be arbitrarily removed from office by the head of the Government. Nor can he have a fixed tenure of office defined in law. He

continues to be in power as long as his party has the complete confidence of the legislature. The maximum number of years for which a Ministry can hold office at a stretch is equal to the maximum period of the life of a legislature. In the Indian provinces the lower chamber or the Legislative Assembly has a life of five years, unless it is dissolved earlier by the Governor. It can be said that normally a Minister will be in his post for a period of five years, if the Ministry is thrown out earlier by a vote of no-confidence, it will be less, if the party is once again returned to power after a general election it will be more.

It is clear that the power of dismissing, like the power of appointing, a Minister, which legally vests in the Governor, must in practice be exercisable by the Prime Minister. On an exceptional occasion, one or more members of even a homogeneous Cabinet may find themselves in serious disagreement with a majority of their colleagues, and under the circumstances they would naturally be expected to withdraw from the Government. But where parliamentary traditions and spirit have not been properly assimilated, such dissenting Ministers may obstinately refuse to resign and thus create a very embarrassing situation for the Ministry as a whole. The impasse would have ultimately to be ended by the Governor exercising, on the advice of the Prime Minister his power of dismissing a Minister and removing the person or persons concerned from their posts.

It is interesting to note that the Governor of Bengal did not exercise his power of dismissal for removing one of the members of the Cabinet, Mr Naushir Ali, who had differences with the Cabinet and when asked to resign was not prepared to do so. The Premier thereupon tendered the resignation of the whole Cabinet, which was accepted by the Governor, and the same leader formed a new Ministry of all his old colleagues with the exception of Mr Naushir Ali. On the other hand, the Governor of the Central Provinces and Berar took the step of dismissing three of his Ministers on the advice of the Prime Minister in July 1938, but as the former had the support of the legislature they had to be immediately reinstated and the Prime Minister had to resign and retire.

The maximum number of Federal Ministers has been prescribed by the Act (it is 10), but no such limit has been prescribed for Ministers in the provinces. The actual number is determined by the convenience of every province and by the exigencies of party alignments in its politics. Generally, the bigger provinces may be expected to have a larger Cabinet than the smaller ones. But this is not always so. The Congress Ministry of Assam, which is one of the smallest and poorest provinces, was composed

of eight members while the Bombay Ministry had only seven. The Central Provinces had five Ministers while the United Provinces had six. There were three Ministers in Orissa, four each in Bihar and the North-West Frontier Province. In the non-Congress provinces, the Punjab had six Ministers, Bengal had eleven and Sind had four till the resignation of the Allabux Ministry early in 1940.

All the work of the Provincial Government is divided into **Distribution of work among them** different sections according to the convenience of the Ministry and the number of its members, and each section, called the portfolio, is assigned to a Minister. A portfolio is made up of many departments of government, and takes its name from the most important of them. The seven Congress Ministers in Bombay had, for instance, the following seven portfolios: (i) Political and Services, Education and Labour,¹ (ii) Finance, Rural Development and Agriculture, (iii) Home and Law, (iv) Health and Excise, (v) Revenue, (vi) Public Works, (vii) Local Self-Government. Each one of these portfolios also contained several other departments in charge of the same Minister.

In regard to the salaries of Ministers, an important departure has been introduced by the Act of 1935. The **Salaries annually voted under the Montford Reforms** Montford Reforms had made them entirely votable. Members of the legislature were called upon to sanction the amount in respect of every Minister while passing the annual budget. They had the right and the opportunity to reduce or even to reject the whole demand. This was a direct check on the policy and actions of Ministers, and one of the most effective ways of indicating the legislature's disapproval of ministerial conduct. Such motions, if they were passed, were equivalent to votes of censure and resulted in the dismissal of the Ministers.

Now the system has changed. It is laid down that the **Salaries now fixed by an Act of the legislature** salary of Ministers will be fixed by an Act of the provincial legislature, and the Act can be amended whenever any changes are felt to be necessary by the people's representatives. Thus the remuneration of the highest servants of the state is left to be determined by the chamber which symbolizes democracy. In the provinces in which the Congress party was in power, the salary of a Minister was fixed by the provincial legislatures at Rs 500 per month. In Bengal and the Punjab it was Rs 2,000.

However, the salary of particular individuals who hold the office of Minister is not annually submitted to the legislature for its sanction, and it cannot be varied during their term of office. In fact, it is placed in the list of items which are charged

¹ This portfolio was taken by the Prime Minister

on the revenues of the province and which are therefore non-votable. The legislature can no longer discuss in annually voted the budget session the general working of for every ministerial departments by proposing a nominal Minister cut in the salaries of Ministers. Nor can it drive them out of office by reducing their salaries to a ridiculously low figure. Hereafter, the only method of direct attack on the Ministers will be to propose a motion of no-confidence in them. When that order to quit is passed, no Minister can continue to hold office, at least in normal circumstances.

The Parliamentary Secretary is a type of official peculiar to the system of responsible government. He is essentially a politician and comes into office with his party and goes out with it. He is expected to possess the same qualities that are supposed to be requisite in a member of the Cabinet. The Parliamentary Secretary has to play the role of an assistant to a Minister and to help him in his administrative, legislative and political duties. It must be emphasized that he is not a member of the public service of the province and can in no sense be described as a bureaucratic official. He must not be confounded with the Secretary to Government, who belongs to the permanent bureaucracy.

The creation of the post of Parliamentary Secretary is advantageous in two ways. Firstly, it relieves of the office the heavy strain on Cabinet Ministers by giving them a second-in-command on whom they can safely rely, both on account of his efficiency and party loyalty. Secondly, it serves as an excellent training-ground for developing ministerial ability and talent, and provides a good reserve from which future Ministers can be drawn. The history of the British Cabinet bears ample testimony to these advantages.

With the advent of popular democracy in Indian provinces the emergence of the Parliamentary Secretary in the provincial polity was quite natural. The Montford Reforms had permitted the appointment of Council Secretaries, but no Governor thought it necessary to avail himself of the permission. The Act of 1935 contains no specific section on this subject, and therefore if there is no positive provision for the appointment of such officers, there is no bar to their appointment if the provincial legislature so desires.

Parliamentary Secretaries have in fact been appointed in almost all the provinces and provision has been made for the payment of salaries and allowances to them. They are not considered to be Government servants holding places of profit under the Crown, and are not disqualified from continuing as members of the legislature in accordance with section 69 of the Act. The salary fixed for a

Parliamentary Secretary in the Congress provinces was Rs 250 per month. Their number has varied from province to province, but the tradition has not yet been established of every Minister being given a parliamentary assistant of this kind. The number of the Secretaries has generally been smaller than that of the Ministers in a province.

§3 COLLECTIVE RESPONSIBILITY OF THE CABINET

One of the fundamental concepts of the Cabinet form of government is the collective responsibility of Ministers. Their number will certainly be more than one—in a country like England it is over twenty. But they all work as a united team, as one corporate and indivisible unit. All of them come into office and go out of office together. All hold themselves responsible for the mistakes or shortcomings of any one of the group, and each one of the group is prepared to sacrifice himself in the interests of all. To the head of the state and also to the public, they present a homogeneous entity, inspired by a common ideology and adhering to a common programme.

The formation of such a coherent council implies that its members are connected with each other by similarity of outlook. They must possess the same sympathies. Their loyalty to principles and persons must be common to a great extent. They must feel attracted to each other by kindred ways of thought and feelings. In fact, the Cabinet consists of persons who are members of the predominant political party in the legislature, owing allegiance to the same leader and pledged to carry out the same programme. All these conditions will have to be automatically reproduced in India with the introduction of responsible government.

It was one of the greatest defects of the Montford Reforms that they did not introduce the practice of collective responsibility. Governors of some of the provinces even discouraged its adoption. Political opinion in India has always insisted that the practice should form an integral part of any constitutional reform introduced in India. The Joint Parliamentary Committee was not very favourable to the proposal, but a clause was ultimately inserted in the Instrument of Instructions to the Governor directing him to foster the growth of joint responsibility among his Ministers.

The principle has been in operation in all the provinces during the last few years and has worked with remarkable success. The Ministries have stood before their parties, the public and the Governors as indivisible units, and full responsibility has been taken

by the whole body for all the actions of its individual members. In 1939, when the action of the Education Minister in the United Provinces in making a particular appointment as Principal of the Roorkee College was severely criticized by members of his own, that is the Congress, party the whole Cabinet supported him and were prepared to resign as a body. Thereupon the party made it clear that they had not lost confidence in the Ministry and the affair was amicably closed.

The Cabinet conducts its business by what is known as the portfolio system. The work of administration can be naturally divided into two categories. **Meaning of the portfolio system** First, there are matters of routine and minor details which may require the attention of the head of the department but which are too insignificant to be brought before the whole Council of Ministers. They are disposed of by a Minister in his individual discretion and judgement, though the responsibility even for them is shared by all his colleagues. Then, secondly, there are important questions of principle and policy affecting a particular department. The Minister may formulate his own scheme of reform and propose certain innovations. But he cannot take any action without consulting his colleagues. All important issues have to be submitted to and thrashed out by the whole Cabinet. There is a free exchange of ideas among its members. Criticisms are made and modifications suggested, and ultimately the scheme emerges in a form which is acceptable to all. Then it becomes the combined obligation of the whole unit, which is bound to stand or fall by it.

What matters are to be considered as minor and what as major is left to the common sense of a Minister. **Differences between colleagues** There can be no hard and fast rule to bind him in this respect. Sometimes differences of opinion may arise about his interpretations, but they can be easily removed. Even on questions of principle, as the Cabinet is constituted by persons who are politically alike, a serious cleavage of opinion between them is not very probable. There may be differences in the degree of emphasis, but they can be easily reconciled. However, on an exceptional occasion it may happen that a Minister cannot agree with the viewpoint of his colleagues or his colleagues find it impossible to tolerate his notions and behaviour. He then has to resign his office and leave a Government with which he cannot work in harmony. If need be, he can be asked to leave the Ministry.

§4. IMPORTANCE OF THE OFFICE OF PRIME MINISTER

Whenever a body consisting of more than one person is required to function, the need for someone to be its leader or president is self-evident. There must be someone to take the

initiative in arranging business, to give rulings on occasions of disputes, to co-ordinate Government activities. The need for a president and to supply that unifying influence which preserves the administrative system from contradictions and chaos. The absence of such a leader would be a great handicap to the smooth working of the machinery of the state.

With the growth of the idea of parliamentary government in England, the King's initiative and authority were naturally doomed. The monarch had to accept a self-denying ordinance and withdraw from active politics and administration in order to make room for the representatives of Parliament. This did not mean the weakening or the degeneration of the executive, but a fundamental change in its structure. The King's Ministers became in reality Parliament's Ministers, appointed, controlled and dismissed by that body. The King's place as their *de facto* master had to be appropriately filled by someone who was pre-eminent in parliamentary life and leadership.

The development of responsible institutions therefore has inevitably been accompanied by the rise to prominence of a new dignitary called the Prime Minister, or more briefly the Premier. In England, the inevitability of his emergence was not realized at the beginning. Members of Parliament keenly resented what was wrongly believed to be an unauthorized usurpation of power by a single individual. But the logic of circumstances was overwhelming. No Government can operate and thrive without an active chief. The Prime Minister came to symbolize and personify the transition from monarchy to democracy, even when the institution of kingship was retained in its nominal majesty.

The inauguration of self-government in the Indian provinces and the formation of responsible Ministries in them must necessarily lead to the same development. Clause VII of the Instrument of Instructions to the Governor recognizes the existence of the leader of the largest political party in the legislature. It is advised that he should be invited to form the Cabinet. Emphasis is also laid on the need of fostering a sense of joint responsibility among the Ministers and on their being able collectively to command the confidence of the legislature. Governors of provinces have in fact followed the method of sending for the leaders of the largest political party in the newly elected legislatures and requesting them to form a Ministry. Such persons are being designated as the Prime Ministers of the provinces.

However, there is a very vital difference between the conditions in England and in India. The British Sovereign has no

place in the British Cabinet. He is precluded from attending its meetings or from attempting to influence or interfere with its working in any manner. His will cannot be imposed on any aspect of the administration. The Prime Minister of the country presides over the Cabinet, keeps himself acquainted with important transactions in every department, helps Ministers to arrive at decisions, and generally organizes and conducts the whole of the executive business. He serves as the connecting link between his colleagues and the Crown. All powers that are technically enjoyed by the latter are actually exercised by the Prime Minister, who stands as the embodiment of the main current of popular opinion for the time being.

In strict legal theory, the King of England appears to be the mighty centre of all governmental authority. However, these appearances are entirely deceptive. In reality, the King cannot act in any manner or in any manner except in accordance with advice tendered to him by Ministers who are elected to Parliament and to power by the votes of the people. It is a famous maxim of the English constitution that the King can do no wrong, because he cannot do anything of his own accord at all. This obliteration of the King's personality from the domain of active government is the essential feature of what is known as constitutional monarchy. The strength and popularity of that institution in British polity is due, among other things, to the fact that it has been democratized and modernized.

As has been explained in the last section, Governors of Indian provinces are not intended to be mere constitutional or nominal heads. They have been entrusted with large powers, to be exercised in their discretion or in their individual judgement, and of which they cannot divest themselves. And even in matters that are left to be disposed of by the Council of Ministers, the Governor may be able to exercise a considerable influence. He is not only not excluded from the Council but presides over its meetings and conducts its business. The Act has specifically provided that Ministers shall keep him informed of practically all important matters in their respective departments. The subordinates of Ministers, namely the secretaries, who are heads of the secretariat staff, are required to bring to the notice not only of the Ministers but also of the Governor all those cases which in their opinion may affect subjects left to the discretion or to the individual judgement of the Governors. The bureaucratic subordinates of popular Ministers have thus a direct statutory access to the head of the province, and an opportunity to influence his decisions. It is a mischievous constitutional anomaly which may breed very unhappy results.

Consequent on the presence of Governors at Cabinet meetings, an interesting practice seems to have developed in all the provinces in regard to ministerial working. The Governor is not an active Indian politician and public leader and, in the nature of things, his approach to public opinion in the province cannot be other than official, alien, and distant. On the other hand, the Prime Minister and his colleagues are representatives of the party in power and political comrades in constant association. They are pledged to carry out a definite programme of social and political reform. Quite naturally they would hold their own regular meetings for the discussion of every important question which arose in the conduct of government.

Such meetings will be informal in the sense that the Governor is not present at them. But they will also be free for that very reason, that is, because of the absence of an outsider at the time of discussion. **Informal meetings of the Cabinet** It is in these meetings that the decisions of Ministers may be finally taken after a full and frank exchange of views, sentiments and differences. Subsequently, in the formal meeting over which the Governor presides, they can be presented as the decisions of a united Ministry, and in a very large majority of cases will be affirmed without difficulty, probably after the Governor has expressed his own opinions. It is believed that informal Cabinet meetings of this type are being held in practice in every province and are sometimes even officially recognized. They may soon come to acquire by convention a status and legal effect which is not given to them by law. This would be, of course, a very healthy constitutional growth.

Of the two partners in the Provincial Government, the Governor is superior in law, and the Prime Minister is superior in popular support and prestige. If autonomy and democracy in the provinces are to be real, the people's representative must be allowed by the Governor to have an entirely free hand in the work of governance. It was decided, in response to the demands of Congress leaders, just before the inauguration of provincial autonomy in April 1937, that no such assurance of freedom can legally and constitutionally be given by the Governor. Then the only alternative left for him is voluntarily to accept the healthy convention of refraining from exercising his ordinary or extraordinary powers in face of the opposition of his Ministers.

It would be undue optimism to imagine that such an exceptional spirit of self-surrender will be invariably displayed by the Governors. It is very difficult to part with power, particularly when its exercise is intended to preserve and to protect the interests of one's own countrymen. And even if some

Governors on some occasions are prepared to keep their authority dormant and unexercised, they may not be permitted to do so by the Governor-General and the Secretary of State who are their constitutional superiors in several respects. However, the trend of affairs since 1937 has been encouraging. The Governors have, on the whole, been known to have accommodated themselves to the wishes of their Ministers and allowed them considerable freedom in carrying out their policies. This fact has been publicly acknowledged even by the Congress Ministries.

§5 THE POSITION OF THE SERVICES

The position of the Services in the scheme of provincial autonomy and also in the federal structure is interesting. The Act has laid down that appointments to the Indian Civil Service and the Indian Police Service are to be made by the Secretary of State, and he can also make any other appointment whenever he thinks it necessary to do so. The rules and regulations about the recruitment of all such persons, about their salary, pensions, leave, dismissal, etc., are to be made by the same authority with the concurrence of the majority of his Advisers. It is one of the Special Responsibilities of the Governor and the Governor-General to safeguard all the rights and privileges of the Services, including their postings and promotions. The Ministers under whom these officers have to serve have not complete control over their subordinates and cannot punish them as they may desire for any infringement of orders.

There thus arises a perplexing and unfortunate situation. The head of the department may settle a policy and issue orders, the agency which has to carry them out may be lukewarm or even hostile to the proposals made by the head. Higher officials in the bureaucracy would be naturally conscious of the fact that their superiors, the Ministers, cannot affect their interest adversely or do them any harm. They may therefore be tempted, directly or indirectly, to sabotage a reform of which they disapprove, by hindering its proper execution.

Such laxity or indiscipline on the part of subordinates is not directly punishable by the Minister. He must bring it to the notice of the Governor and try to get the guilty person properly reprimanded. It is obvious that the harnessing together of Ministers who cannot control their servants, and servants who look upon their position with a feeling of distrust, uncertainty, and lack of enthusiasm, is bound to prove embarrassing to both parties. Fortunately, during the last five years of the working of provincial autonomy, the relations between the Ministers and the

Services are reported, on the whole, to have been satisfactory. It does not appear to have been found necessary in any province to invoke the Governor's Special Responsibility in respect of the Services on account of a major difference of opinion between him and his **Ministers**.

XXXV. THE PROVINCIAL LEGISLATURE

§1 INTRODUCTION OF THE BICAMERAL SYSTEM

THE history of the provincial legislatures before the Montford **Introductory** Reforms and their further development under the dyarchical scheme have been explained in earlier chapters¹ The changes introduced by the Act of 1935 and the shape given by them to the provincial legislature have now to be studied in detail They have been elaborated in Chapter 8, sections 60-87, of the Act

The most important of these changes must be noticed at **Two chambers** the outset For the first time in Indian constitutional history, the bicameral principle has been **for certain** introduced in the provincial sphere It has been **provinces** provided in section 60 of the Act that there will be two chambers in Bombay, Madras, Bengal, the United Provinces, Bihar and Assam, and one in each of the remaining provinces The upper chamber is called the Legislative Council and the lower chamber is called the Legislative Assembly

The harmful consequences of this innovation cannot be over- **Harmful** looked Even in a big unitary state, the utility **effects** of the bicameral system is questionable Some eminent thinkers have gone to the length of saying that it is not indispensable even in a federation Its introduction in the smaller and simpler government of a province has no justification, and is indeed positively harmful because to a large extent it counterbalances the constitutional advance that is implied in the popularization of the lower chamber

The structure of the Legislative Councils, wherever they **Undemocratic** have been created, follows the usual lines of an **upper chamber** oligarchical concentration The number of their members is small The franchise for their election is extremely high and the constituencies which elect them are very narrow They inevitably become the focus of all kinds of vested interests in the country A House which is comprised mostly of big landlords, millionaires, merchant princes and impecunious fragments of a dilapidated aristocracy becomes an organized stronghold of conservatism and reaction

Such a second chamber not only duplicates the legislative process but complicates administration If its powers are real and effective, it nullifies democracy, if its objective is simply to postpone and to delay, it is too expensive and pedantic a mechanism to be maintained in a Provincial Government. Its only function is to hinder the movement of others by acting as

¹ See Chapters xxix and xxx

a brake on their speed. In the environment of a conquered country, an oligarchical House also automatically tends to become not only indifferent but even hostile to the country's political freedom.

§2 TENURE OF MEMBERSHIP

Following the model of the federal upper chamber, namely the Council of State, the provincial Legislative Council is also made a permanent body, never liable to a wholesale dissolution. One-third of its members have to retire every three years and an individual member has a tenure of as many as nine years. This is of course an abnormally long period for any elective chamber. It is an essential feature of a democratic institution that the closest affinity should exist between the representative and his constituency. The currents of popular opinion are liable to frequent and profound change. Elections therefore should be held at short intervals in order to avoid a grievous divorce between the sentiments of the people and those of their chosen representatives. A member who, after election or nomination, is assured of his parliamentary seat for the span of nearly a decade, has no incentive to keep himself up-to-date in his knowledge of the ever changing view-points of the public or to interpret them loyally. As the whole of the Legislative Council cannot be simultaneously dissolved at any time it will always contain a substantial element which may be out of tune with contemporary thought and life and will be liable to run counter to the will of the people.

The tenure of the Legislative Assembly is five years. This may be considered to be a fairly reasonable period. **The upper chamber is permanent** neither too long for real democratic working nor too short for continuity and efficiency. An Assembly can be dissolved by the Governor earlier than the period of five years if circumstances demand that an important issue should be decided by the electorate. The ministerial executive may sometimes come into conflict with the legislature and may yet feel that the people are on its side. By dissolving the Assembly and holding fresh elections, the dispute is naturally submitted to the arbitrament of the people who are the final masters and judges.

§3 CONSTITUTION OF THE CHAMBERS

The numerical strength of the legislative chambers in different provinces is prescribed by the Fifth Schedule of the Act and is given in the accompanying tables. It will be seen that the numbers of the Assembly show a considerable improvement over the limits prescribed by the Montford Reforms. In the old Bombay Legislative Council,

PROVINCIAL LEGISLATIVE COUNCILS

Table of Seats

Province	Total of seats	General seats	Muslim seats	European seats	Indian Christian seats	Seats to be filled by the Legislative Assembly	Seats to be filled by the Governor
Madras	Not less than 54 Not more than 70	35	7	1	1	{	Not less than 8 Not more than 10
Bombay	Not less than 29 Not more than 30	20	5	1		{	Not less than 3 Not more than 4
Bengal	Not less than 69 Not more than 65	10	17	9		{	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	14	17	1		{	Not less than 6 Not more than 8
Punjab	Not less than 29 Not more than 30	9	4	1		{	Not less than 3 Not more than 4
Assam	Not less than 21 Not more than 22	10	6	2		{	Not less than 9 Not more than 4

INDIAN ADMINISTRATION

PROVINCIAL LEGISLATIVE ASSEMBLIES

Table of Seats

Province	Total seats	Total general seats	General seats reserved for scheduled castes	Seats for backward areas and tribes	Sikh seats	Muslim seats	Anglo-Indian seats	European seats	Indian Christian seats	Commerce, Industry, Mining, Planning	Landholders' seats	University seats	Labour seats	General	Seats for Women			
															Sikh	Muslim	Anglo-Indian	Indian Christian
Madras	215	146	30	1	.	28	3	3	3	6	6	1	6	6	1	1	1	1
Bombay	175	114	15	1	.	23	3	3	3	7	2	1	7	3	1	1	.	.
Bengal	250	78	30			117	11	11	2	19	3	3	8	4	3	3	1	.
United Provinces	228	140	20			64	1	2	2	3	6	1	3	1	4	2	.	.
Punjab	175	42	8		31	84	1	1	1	1	5	1	3	3	1	3	.	.
Bihar	152	86	15	7		39	1	2	1	4	4	1	3	1	.	1	.	.
Central Provinces and Berar	112	84	20	1		14	1	1	1	2	3	1	2	3	.	.	.	.
Assam	108	47	7	9		34	1	1	1	11	3	1	4	1	.	.	.	.
North-West Frontier Province	50	9			3	36			1	1	2		1	2			.	.
Orissa	60	44	6	5		4					2		1	1			.	.
Andhra Pradesh	60	18				33	2			2	2	.	1	1		1	.	.

for instance, there were only 67 elected members from the Presidency proper, barring the Sind bloc. Now that number is 175. This increase in numbers is most welcome. It reduces the size of the constituencies and enables smaller units of population to have seats assigned to them. A living contact can be established between the voter and his representative if the size of the electorate is manageable.

Another reform introduced by the new Act is the elimination of the nominated and official members of the legislature. They were a great handicap to the popular side. Their solid voting on any question was merely the result of bureaucratic regimentation. Their numbers created false appearances because their votes were cast under executive command. A small remnant of this system is still retained in the upper chambers both in the provinces and in the Federation. To that extent the constitution must be said to be defective.

The duties of the president of a legislature and the importance of that office have already been explained in Chapter XVI.¹ In a democratic constitution the office is elective and the same principle has been adopted for the Indian provinces.

The president of the Legislative Council is called the **The President**. The president and that of the Legislative Assembly is called the **Speaker**. There are also a deputy-president and deputy-speaker. All these officers are elected by the chambers from among their own members, and they must vacate office if they cease to be members of those bodies. They can be removed from office by a resolution of the chamber concerned passed by a majority of all its members (that is, not only of those present). At least fourteen days' notice is required of the intention to move a resolution of this kind.

The salaries and allowances of these officers are fixed by **Their** an Act of the provincial legislature. In Bombay **salaries** they have been fixed at Rs. 850 per month for the President and the Speaker with a motor car allowance of Rs. 200 per month. They are also provided with furnished houses.

In the absence of the President and the Speaker, the **Panel of** deputy-president and the deputy-speaker preside **Chairmen** over the sessions of their respective chambers. Provision can be made by the rules of procedure for a person to preside when the deputies are also absent from a meeting. It is laid down in the Rules of the Bombay Legislative Assembly and also of the Legislative Council that at the commencement of every session the Speaker or the President, as the case may be, shall nominate from among the members a panel of not more than four Chairmen. Any one of these persons may

¹ See pp. 132-3

preside over the chamber concerned in the absence of the Speaker and deputy-speaker or the President and deputy-president when asked to do so by those authorities.

The chamber or chambers of the provincial legislature must be summoned to meet once at least in every year, and between two sessions of a chamber there cannot be an intervening period of twelve months. In actual practice in a democratic constitution, the legislature must be almost continuously in session, because all important questions of policy and administration are discussed and decided by it. With the enormous increase in modern days of the sphere of governmental activity, membership of the legislature in the responsible or parliamentary type of democracy has become a whole-time job, requiring constant presence at the metropolis and strenuous attention to public business. After the inauguration of provincial autonomy, the legislative chambers in the provinces are being called upon to hold long sessions, and the initiative in this respect is taken by the Ministry in power.

Section 66 (3) of the Act prescribes that at least one-sixth of the total number of members of a Legislative Assembly, and at least ten members of a Legislative Council must be present at their respective meetings. If the number of those present falls below this minimum, the Speaker or the President must either adjourn the chamber or suspend the meeting till the necessary number is present.

A Minister may be a member of only one chamber where there is the bicameral system. But he has the right to address both chambers and to take part in its proceedings but not to vote in that chamber of which he is not a member. This is a salutary departure from the English model, and enables the Government policy to be explained and justified by the person who is directly in charge of it. The same privilege is extended to the Advocate-General, who has to explain to the legislature the legal position and implications of the measures proposed by the Government.

§4 CONSTITUENCIES AND FRANCHISE

The province is divided into small territorial areas for the purpose of elections. The district is generally taken as the unit because of the homogeneity it possesses and the facility for organization that it offers. Large cities are formed into groups by themselves. Non-territorial constituencies are formed for commerce and industry, landholders and other special interests. The three types of electorates that

exist everywhere in India have already been explained at length.¹

An electoral roll is prepared for every territorial constituency, and no person who is not included in the roll is entitled to vote in that constituency. No person can become a voter unless he is twenty-one years of age. No person can become a member of the provincial Legislative Assembly before he attains the age of twenty-five, or of the Legislative Council before the age of thirty. No person can become a member of both the houses of the provincial legislature. Residence in the constituency for a certain number of days, usually 180 or 120, is a necessary condition of the franchise.

The following is a brief summary of the principal franchise qualifications in the different provinces. It is not of course an exhaustive list but contains the main items.

(1) MADRAS

(i) The Legislative Assembly (a) those who pay the motor vehicle tax or a profession tax or a property tax or house-tax to any municipality or local board, or who are assessed to income-tax; (b) those who are registered landholders, inamdars, ryotwari pattadars, or occupancy tenants, (c) those who are literate. Women possessing these qualifications are allowed to vote. A woman is also allowed to vote if her husband is assessed to pay income-tax or pays an annual house rent in the city of Madras of not less than Rs. 60 or pays property or profession tax of not less than Rs. 3 per year or holds land of an annual rental value of not less than Rs. 10.

(ii) The Legislative Council (a) those who pay income-tax on an income of not less than Rs. 7,500 per year, (b) those who hold land of an annual rent value of not less than Rs. 300, (c) those who hold titles not less than Rao Bahadur, (d) those who have been members of any legislature, executive councillors, ministers, members of a university senate, high court judges, presidents of municipalities or district boards, or chairmen of central co-operative banks, etc. Women possessing these qualifications have the right to vote. A woman can also vote if her husband is assessed to income-tax on an annual income of not less than Rs. 20,000 or holds land the annual rent value of which is not less than Rs. 1,500, etc.

(2) BOMBAY

(i) The Legislative Assembly (a) those who pay income-tax, (b) those who hold land assessed to a land revenue of not

¹ See Chapter XIV

less than Rs. 8 per year, (c) those who pay an annual house rent of not less than Rs. 60 in the city of Bombay or Rs. 18 in any other place, (d) those who have passed the matriculation or school leaving examination. Women possessing these qualifications can vote. A woman can also vote if her husband pays income-tax or holds land assessed to an annual revenue of not less than Rs. 82 or if she is literate.

(ii) The Legislative Council (a) those who pay income-tax on an annual income of not less than Rs. 15,000; (b) those who hold land assessed to a land revenue of not less than Rs. 350 per year, (c) those who are sardars, (d) those who hold titles not less than that of Rao Bahadur, (e) those who have been members of any legislature, executive councillors, ministers, members of a university senate, judges of high courts, presidents of municipalities or district local boards, chairmen of central co-operative banks, etc. Women possessing these qualifications have the right to vote. A woman is also allowed to vote if her husband is assessed to income-tax on an annual income of not less than Rs. 30,000 or if he holds land assessed to an annual land revenue of not less than Rs. 2,000 or if he is a sardar, etc.

(3) BENGAL

(i) The Legislative Assembly (a) those who pay the motor vehicle tax, or income-tax, or a tax or licence fee to the Calcutta Corporation, or municipal tax of not less than As. 8 or road and public works cess of not less than As. 8 or the chaukidari tax or union rate of not less than As. 6, every year, (b) those who have passed the matriculation or an equivalent examination. Women possessing these qualifications are given the right to vote. A woman is also entitled to vote if her husband owns or occupies, in the city of Calcutta, a house valued for assessment purposes at not less than Rs. 150 per annum or, in any other city, if he pays municipal fees or taxes of not less than Re. 1-8 per year, etc.

(ii) The Legislative Council (a) those who pay income-tax on an annual income of not less than Rs. 5,000 (b) those who hold titles not less than Rao Bahadur, (c) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc., (d) those non-Muslims who in Burdwan and Presidency Divisions pay an annual land revenue or rent or both of not less than Rs. 2,000, and in the divisions of Dacca, Rajshahi and Chittagong not less than Rs. 1,500; (e) those Muslims who pay not less than Rs. 250 per year as land revenue or rent or both. Women possessing these qualifications have the right to vote. A woman can also vote if, in the case of

non-Muslims, her husband pays income-tax on an annual income of not less than Rs. 12,000, or pays as a proprietor land revenue of not less than Rs. 7,500 per year in Burdwan and Presidency Divisions and not less than Rs. 5,000 in Dacca, Rajshahi and Chittagong Divisions. In the case of Muslims the husband must pay income-tax on income of not less than Rs. 6,000 or land revenue of not less than Rs. 600 per year.

(4) THE UNITED PROVINCES

(1) The Legislative Assembly (a) those who are assessed to income-tax or who pay municipal tax on an income of not less than Rs. 150 per year, (b) those who are owners or tenants of a house the rental value of which is not less than Rs. 24 per annum, (c) those who own land which is assessed for land revenue of not less than Rs. 5 per year or those who as tenants pay rent of not less than Rs. 10 per annum, (d) those who have passed the upper primary examination, etc. Women having these qualifications are allowed to vote. A woman also gets the right to vote if her husband is the owner or tenant of a house the rental value of which is not less than Rs. 36 per year or who owns land assessed at not less than Rs. 25 or pays as a tenant not less than Rs. 50 per year as rent or pays income-tax, etc.

(u) The Legislative Council (a) those who pay income-tax on an annual income of not less than Rs. 4,000, hold a title not lower than Rao Bahadur or have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc., (b) those who pay land revenue of not less than Rs. 1,000 per year or those who pay as tenants not less than Rs. 1,500 per year. Women possessing these qualifications are given the right to vote. They also get the right if the husband pays income-tax on not less than Rs. 10,000 per year or on land revenue of not less than Rs. 5,000 per year, etc.

(5) THE PUNJAB

The Legislative Assembly (a) those who pay income-tax or a direct municipal tax of not less than Rs. 50 per year, (b) those who pay land revenue of not less than Rs. 5 per year or who are tenants of not less than six acres of irrigated or twelve acres of unirrigated land, (c) those who own or occupy immovable property of a rental value of not less than Rs. 60 per year, (d) those who have attained the primary educational standard. Women having these qualifications are allowed to vote. A woman can also vote if her husband pays income-tax or a direct municipal tax of not less than Rs. 50 per year or land revenue of not less than Rs. 25 per year, etc.

(6) BIHAR

(i) The Legislative Assembly: (a) those who pay income-tax, or not less than Re. 1-8 as municipal tax, or not less than As. 9 as *chaukidari* tax; (b) those who pay house rent of not less than Rs 24 per year in Jamshedpur or not less than Rs. 6 per year in other places, (c) those who have matriculated. Women possessing these qualifications have the right to vote. A woman can also vote if her husband pays income-tax, or not less than Rs 3 as municipal tax, or not less than Rs 2-8 as *chaukidari* tax, or pays house rent of not less than Rs 144 in Jamshedpur and not less than Rs 24 in other places per year, etc

(ii) The Legislative Council (a) those who pay income-tax on not less than Rs 7,500, (b) those who pay, in a Muslim constituency, land revenue of not less than Rs 375 per annum or, in any other constituency, not less than Rs 600 per year; (c) those who hold titles not lower than Rao Bahadur; (d) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc Women having these qualifications can vote. A woman is also given the right to vote if her husband pays income-tax on not less than Rs 20,000 or holds land paying a revenue of not less than Rs 1,200 in the case of Muslims and not less than Rs 2,400 in the case of others, etc

(7) THE CENTRAL PROVINCES AND BERAR

The Legislative Assembly (a) those who pay income-tax, or a municipal tax assessed on a *haisiyat* of not less than Rs 75, (b) those who pay land revenue of not less than Rs 2 per year, (c) those who own or occupy a house of an annual rental value of not less than Rs 6, (d) those who have passed an examination giving admission to the Nagpur University. Women possessing these qualifications have the right to vote. A woman is also qualified to vote if her husband pays not less than Rs. 35 per year as land revenue or occupies a house of an annual rental value of not less than Rs 36, etc.

(8) ASSAM

(i) The Legislative Assembly (a) those who pay income-tax, or not less than Rs 2 (or in some areas Re 1-8 or Re 1, or As 8) as municipal tax or *chaukidari* tax per year, (b) those who pay land revenue of not less than Rs 7-8 per year or those who pay Rs. 7-8 as rent; (c) those who have passed the middle school leaving examination. Women possessing these qualifications have the right to vote. A woman can also get the right if her husband pays income-tax, or municipal taxes varying from

Rs. 2 to Re. 1 per year or if he pays land revenue of not less than Rs. 15 per year, etc.

(ii) The Legislative Council: (a) those who pay income-tax on not less than Rs. 3,000 per year or land revenue of not less than Rs. 500 per year; (b) those who hold titles not lower than Rao Bahadur; (c) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc. Women who possess these qualifications are given the right to vote. A woman is also allowed to vote if her husband pays income-tax on not less than Rs. 6,000 or pays land revenue of not less than Rs. 1,000 per year, etc

(9) THE NORTH-WEST FRONTIER PROVINCE

The Legislative Assembly (a) those who pay income-tax, or not less than Rs. 50 as municipal tax, or not less than Rs. 2 as district board tax, (b) those who occupy a house of the rental value of not less than Rs. 48 per year, (c) those who are owners or tenants of not less than six acres of irrigated and not less than twelve acres of unirrigated land or who pay land revenue of not less than Rs. 5 per year, (d) those who have passed the matriculation or, in rural areas, the fourth class primary examination. Women who possess these qualifications have the right to vote. A woman is also entitled to vote if her husband has an income of at least Rs. 40 a month or if he pays income-tax or if he pays house rent of not less than Rs. 48 per annum or pays land revenue of not less than Rs. 10 per annum, etc

(10) ORISSA

The Legislative Assembly (a) those who pay income-tax, or not less than Re. 1-8 as municipal tax, (b) those who have passed the matriculation examination, (c) those who pay chaukidari tax of not less than As. 9 or land revenue of not less than Rs. 2 per year, there being slight variations in the amounts according to districts. Additional qualifications are also prescribed for women.

(11) SIND

The Legislative Assembly: (a) those who pay income-tax; (b) those who own or occupy as permanent tenants land assessable for land revenue at not less than Rs. 8 per year, (c) those who cultivate as *hars* land assessed at not less than Rs. 16 land revenue per year, (d) those who pay an annual house rent of not less than Rs. 30 in Karachi and Rs. 18 elsewhere; (e) those who have passed the matriculation examination. Women

possessing these qualifications are allowed to vote. A woman also gets that right if her husband is assessed to income-tax or pays Rs. 82 as land revenue per year or pays an annual house-rent of not less than Rs. 60 in Karachi or not less than Rs. 26 elsewhere.

The following persons are disqualified from being voters:

Dis-qualification (a) those who hold any office of profit under the Crown in India, except Ministers and such other officers as may be mentioned by an Act of the provincial legislature, (b) those who are of unsound mind, (c) those who are undischarged insolvents, (d) those who are guilty of election offences, (e) those who are convicted and sentenced to imprisonment for not less than two years, in this case the period of disqualification is to be five years or such less number of years as the Governor in his discretion may allow in a particular case

A person can stand for election to more than one legislative chamber but he must sit as a member of only one of them. He must make his choice soon after election results are published

The franchise for the Legislative Assembly in every province

Percentage of enfranchised people is fairly low. It is much more restrictive than pure adult suffrage, but the payment of only Re 1-8 as house rent per month or Rs 8 as land revenue per year can in no way be described as a very high demand. Even when the requirements are so insignificant, the total enfranchised population throughout British India has been calculated to be in the neighbourhood of thirty-five million, or only about 14 per cent of the British Indian population. Nothing provides more eloquent evidence of the exceptionally poor standard of life and annual income of the average Indian

§5 FUNCTIONS AND POWERS

The functions and powers of a provincial legislature are **Three types** similar to those of the legislature of any democratic country. They can be divided as usual into the three groups of legislative, administrative and financial, and treated separately under those heads.

The legislature is the law-making authority in the province, **Power of law-making** and all laws required to be passed in respect of subjects assigned to the provinces and enumerated in the Provincial Legislative List have to be enacted by its chamber or chambers. They can also enact laws on subjects enumerated in the Concurrent Legislative List. Certain limitations have been placed on this power, and they have been mentioned in Chapter XXXII, §1

The legislature has also been empowered by section 84 of the Act to frame rules for regulating the procedure and conduct of its business, and in the exercise of that power legislative

chambers in all provinces have framed elaborate rules for the purpose mentioned. They follow more or less the same pattern, and the rules of one chamber bear a very considerable resemblance to those made by another. The Bombay Legislative Assembly Rules are 149 in number and the Bombay Legislative Council Rules are 186.

Legislation is one of the most vital and effective instruments in the conduct of government, and it is only natural that those who are responsible for carrying on the government at any time should have the predominant share in law-making. Most of the Bills that are put before the legislature are therefore initiated by the Ministry. They are the leaders of the party which has a majority of seats in the house and which has been placed in power by the votes of the electorate. They have a mandate to implement their programmes of reconstruction and reform, and must exercise a prior claim on the time and attention of the legislature.

Any member of the legislative chamber of a province can give notice of a Bill which he wants to move, and subject to the provisions of the Act of 1935, can seek permission to introduce it. But as in other countries, private Bills given notice of or introduced by non-official members have only a small chance of being taken up for consideration by the chamber or chambers, and are often crowded out, or lapse, for want of time. According to the rules of the Bombay Legislative Assembly, Government may allot specific days for private members' business, the number of days so allotted being not less than two days for every fourteen days on which Government business is transacted.

The procedure in the provincial legislature in respect of the passage of Bills is to a great extent similar to what has been described in Chapter XVI.¹ Provision has been made for the translation of a Bill, after it is published in the *Gazette*, into the recognized languages of a province, and also for its reference, after the first reading, to a Joint Committee of both the chambers where there are two chambers, if it is considered expedient to do so.

If a province has two chambers, a Bill, other than a money Bill, can originate in either of them. Money Bills must originate only in the lower house, that is the Legislative Assembly. Every Bill has to pass through three readings in each chamber, and must be passed in identical form and language by both chambers before it can become an Act. Separate provisions have been

Most of the Bills are Government Bills

Days for private members' business

Nature of the procedure

Assent of both chambers necessary for Bills

made for cases of disagreement between the houses. Since the advent of provincial autonomy, many Acts of first-rate importance have been placed upon the statute book by the legislature of every province.

The legislature's control over the provincial administration **Control over administration** is exercised in the four ways described in Chapter XIV.¹ It may pass resolutions and thereby give definite expression to its views on a matter of public importance. Any of its members can put questions and supplementary questions on administrative affairs, and Ministers are bound to supply all the information required in this way. This is a healthy check on the executive machine and a convenient method of exposing any defects or high-handedness that may be noticed in its operation. A member can also move a motion of adjournment to discuss a matter of recent occurrence and of public importance. This gives the Government an opportunity to explain their position and allows the legislature to express its approval or disapproval of Government's policy. Lastly, a direct attack can be launched against the actions and conduct of a Minister or Ministers by moving a motion of no-confidence in him* individually or in the whole Ministry. Such motions have been tabled against the Ministers in Bengal and Sind, but without success, though the Sind Ministry had ultimately to resign. The procedure in respect of each one of these matters has been prescribed by rules made by the legislative chamber or chambers.

A popular legislature must exercise complete control over **Financial powers** the finances of the country in a free democracy. The powers of the provincial legislature in this particular domain have increased after the introduction of provincial autonomy. The sources of income which are within the competence of that body to vote have been described in Chapter XXXII, §3. The budget of the province for every financial year has to be placed before the chamber or chambers of the legislature. It shows separately the expenditure that is charged upon the revenues of the province and is not votable by the Assembly, and expenditure that is votable by it. However, most of the items in the non-votable list can be thrown open for discussion by the Governor. The votable expenditure is to be submitted to the Legislative Assembly (and not to the upper chamber, that is the Legislative Council if it exists in a province) in the form of demands for grants. The Assembly has power to assent to, to refuse, or to reduce any such demand, but not to increase it. Any reduction made by it in an amount demanded can be restored by the Governor if he thinks that

¹ Pp. 110-11

the cut would affect the discharge by him of any of his Special Responsibilities.

In the final issue of the Civil Budget Estimates of the Bombay province for the year 1939-40, the authenticated schedule of expenditure showed that out of a total expenditure of Rs 14.06 crores, Rs 3.72 crores were charged upon the revenues of the province and Rs. 10.34 crores were voted by the Legislative Assembly.

The following statement will give an idea of the budgetary position in Bombay; it does not of course contain all the detailed figures in the budget.—

REVENUE FROM, AND EXPENDITURE ON, SOME IMPORTANT
HEADS IN THE PROVINCE OF BOMBAY 1939-40

<i>Revenue</i>		<i>Expenditure</i>	
	<i>Rs</i>		<i>Rs</i>
Taxes on Income	32,20,000	Land Revenue	66,63,000
Land Revenue	3,38,63,000	Provincial Excise	39,37,000
Provincial Excise	1,77,10,000	Forest	27,32,000
Stamps, non-Judicial	75,56,000	Other Direct Demands	
Stamps Judicial	68,20,000	on Revenue	39,00,000
Forest	41,54,000	Police	1,71,43,000
Registration	14,45,000	Education	2,09,92,000
Motor Vehicles	43,30,000	Medical	47,79,000
Other Taxes and		Public Health	31,48,000
Duties	2,06,42,000	Agriculture	13,06,000
Civil Administration	1,11,98,000	Co-operation	17,63,000
		Industries	13,14,000
		Miscellaneous Depart-	
		ments	10,71,000

§6 PRIVILEGES, SALARY AND LEAVE OF MEMBERS

Subject to the provisions of the Act of 1935 and to the rules and standing orders regulating the procedure of the legislature, there is freedom of speech in every provincial legislature. No member is liable to any proceedings in any court in respect of anything said by him or of any vote given by him in the legislative chamber or any of its committees. No action can be taken against him in respect of the publication by or under the authority of the chamber of any report, paper, votes or proceedings. Other privileges of members may be defined by an Act of the provincial legislature. That body cannot however have the status of a court or any punitive or disciplinary powers other than the power to remove or exclude persons who infringe the rules or standing orders or behave in a disorderly manner.

Travelling and halting allowances Members of the Legislative Assembly and Council will be entitled to receive such salaries and allowances as may from time to time be determined by an Act of the provincial legislature. This is an important privilege Members have to travel from their place of residence to the city—this is usually the capital of the province—where the sessions of the legislature are held, and to stay in that city during the continuance of the session. It is obvious that adequate travelling and halting allowances must be paid to them for this purpose.

Onerous duties of the members of a legislature But in the light of modern political ideas and developments even this is not enough. The duties of a legislator in a democratic state are now very extensive and exacting, and all his time and energy have to be devoted to them. They cannot be performed, as before, merely as an interesting hobby or pastime during intervals which may be snatched from a busy professional life. It is admitted that democracy, to be real, ought to enable even a poor man with the necessary popularity and ability to become a member of the legislature and to fulfil all the obligations of that office.

Salary necessary in the interests of social justice But this would mean that he must give up the vocation by which he has been earning his livelihood and also, in a majority of cases, his usual place of residence because the legislature is located in the metropolis. Evidently, a man without other means of subsistence cannot afford to lose his trade or employment, to do so will be to bring starvation and ruin to him and to his family. Under such circumstances, the rich man of leisure will be at a great advantage. He can enter the legislature and conduct the government, but it will not be democracy. Many modern constitutions have therefore provided for the payment of a salary to a member of the legislature, so that the opportunity of participating in parliamentary life is not entirely denied to poor but competent persons. Members of the British Parliament get a salary of £600 per year.

Salary fixed in Bombay After the introduction of provincial autonomy, the Bombay legislature decided to accept the principle of paying a salary to its members and passed an Act for that purpose. The amount of the salary has been fixed at Rs 150 per month. Travelling and other allowances have been similarly provided and detailed rules have been prescribed in that connexion. Other provinces have also passed measures on the same lines.

Permission for long absence If a member at any time finds that he is unable to attend the meetings of a chamber for a period of sixty consecutive days (no account being taken of the period during which the chamber is prorogued, or is adjourned for more than four consecutive days) he must apply for permission to

remain so absent, and the chamber may grant the permission. If a member remains absent without such permission, the chamber may declare the seat of the member vacant and it would then have to be filled by a fresh election

§7. CONFLICT BETWEEN THE CHAMBERS

Where there are two legislative chambers with co-ordinate powers, there is a possibility of a serious disagreement between them. A Bill passed by one chamber may not be acceptable to the other. It may propose certain amendments which the originating chamber is not prepared to endorse. The constitution lays down that no Bill can become an Act unless it is passed by both chambers of the legislature. The question then arises as to whether the Bill in dispute should be dropped altogether or whether some method should be found to overcome the deadlock. To allow the 'Noes' to carry the day on all occasions would be hardly fair to the bigger and more popular chamber. A more constructive remedy is therefore required.

Section 74 of the Act of 1935 lays down that if a Bill passed by the Legislative Assembly is not passed by the Legislative Council within twelve months of its receiving the Bill, the Governor may summon the chambers to meet in a Joint Sitting for the purpose of deliberating and voting on the Bill. In such a meeting the vote of the majority of members present will finally decide the issue. No new amendments can be suggested at this stage. The Governor may summon a Joint Sitting even before the period of twelve months is over if he feels that the Bill under discussion relates to finance or affects any of his Special Responsibilities.

The President of the upper chamber will preside over a Joint Sitting. Rules as to procedure are to be made by the Governor in consultation with the President of the Council and the Speaker of the Assembly.

XXXVI. THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

§1 THE LEGISLATURE'S CONTROL OVER THE MINISTERS

It is one of the most vital characteristics of parliamentary government that the executive is completely subordinate to the legislature. In England, for instance, the House of Commons is all in all. The British Cabinet, however great may be the men who compose it, is entirely the servant of the British Parliament, brought into office because of the support of its majority, and deposed from power as a result of the expression or indication of its displeasure. The British democracy is reflected in the British Parliament. Through the instrumentality of that legislative body, it exercises its ultimate and unlimited sovereignty.

If India's political progress is to lie along democratic and parliamentary lines, the Indian legislatures must be placed in the same position of unquestioned supremacy, without unduly minimizing the importance and prestige of the executive. The claim has been repeatedly made for the Act of 1935 that it has established full provincial autonomy. It would therefore follow that all political authority in the province is now vested in its legislature. How far does such a state of things exist in actual practice? To what extent does the provincial legislature control taxation, expenditure, and the executive actions of Ministers?

The Act has laid down that the appointment of Ministers has to be made by the Governor. But it is a necessary condition that they must be members of the provincial legislature. The Governor is further instructed to endeavour to select them in such a manner that they are able collectively to enjoy the confidence of that popularly elected body. These are significant provisions. Their inevitable result, in normal circumstances, would be that the Ministers are appointed, in effect, by the legislature, which is really the nation in miniature for the time being.

The recognized leaders and prominent members of different political parties contest the elections. They put forward their policies and programmes. The voters, who are to make the final choice are naturally persuaded to support that man and that party whose views and general outlook appeal to them.

A leader who has the overwhelming backing of the electorate is in an extremely formidable position. No Governor can afford to

ignore him or to set him aside. To do so would be to precipitate a political crisis which would be likely to end in the Governor having to yield to the weight of popular opinion.

The salaries of Ministers, though fixed by the legislature, **Ministers' salaries are non-votable** are not annually voted by it in respect of individual Ministers. They are charged on the revenues of the province and are included in the non-votable list. It may be feared that this restriction strengthens the position of the Ministers and correspondingly weakens that of the legislature, because the withholding of salaries has ceased to be a weapon in the hands of the latter. However, it is not likely to make much difference in actual practice.

A large portion of the expenditure on ministerial departments has been made subject to the sanction of the legislature. That body may refuse to sanction any **Refusal of supplies and motions of no-confidence** amount if it disapproves of the conduct of Ministers and desires that they should resign. Such a refusal of supplies is bound to have an immediate effect. In fact, the legislature is allowed to adopt even a more direct method of telling Ministers that they are not wanted. It can pass a definite motion of no-confidence in them and thus command that they should leave their office. In face of such a straight attack, no Ministry can survive. Not even the Governor can hope to save it from dismissal.

It is therefore clear that the Ministers' position of subordination to the legislature is accepted in the new constitution. This does not, however, apply to abnormal and extraordinary occasions, as for example, when the majority party in the legislature refuses to form the Ministry and also does not allow others from the minority groups to form one.

§2 CONTROL OVER FINANCE AND LEGISLATION

The real difficulties of the legislature do not arise on account of its inadequate control over the Ministers, but **Non-votable items in the provincial budget** on account of serious deductions made from its own powers in several ways. All the expenditure of the Provincial Government is not left to be determined and regulated by the legislature's will. The budget is divided into parts, consisting of votable and non-votable items. The latter are deliberately excluded from the authority of the elected representatives of the people, though discussion on them may be permitted. The non-votable expenditure amounts to about 80 per cent of the total expenditure. This means a considerable watering down of the very concept of provincial autonomy.

Even in regard to items that are votable, the dictation of the legislature is not final. Its members may make cuts in the

amounts demanded by the Ministers. But if the Governor is **Power of** satisfied that any such cut is likely to affect any **restoring cuts** of his Special Responsibilities, he can restore it, wholly or partly, in his own discretion. The creation of such an extraordinary veto is incompatible with a genuine transfer of power to the people of the province. Its exercise will naturally prove to be irritating, because it will be tantamount to a deliberate defiance of popular opinion.

In matters of legislation also a similar exceptional provision **Power of** has been made. All laws required for the province **enacting** have to be placed before the legislature for consideration and enactment. This is quite in keeping **Governor's** with the democratic principle. Laws which **Acts** concern all and have to be obeyed by all ought, in the fitness of things, to be decided by all. However, the constitution has further provided that the Governor, acting alone and in his individual capacity, may enact any law which he thinks it necessary to enact. There need not be even the pretence of a consultation between him and the legislature or an attempt on his part to bring them round to his views. Such Governor's Acts, passed as they are by the single head of the executive in his own autocratic judgement, would be irrefutable evidence of the limitations on provincial autonomy imposed by the Act of 1935.

§3 CONTROL OVER THE SERVICES

Ministers constitute what may be described as the political **The political** executive of the state. They are expected to be **executive** men of versatile talent and of broad vision. Their chief duty is to think in terms of ideals and formulate far-seeing policies. It has already been explained that in the structure of provincial autonomy, Ministers are made fully responsible to the legislature of the province.

There is another constituent of the executive which supplements **The** and completes the work of Ministers. It is **administration** composed of the Civil Service and is known as the administration. Its duty is to carry out the plans and projects of parliamentary leaders and give them a concrete shape. That is a responsible and difficult task and can only be accomplished by really competent men.

The position of such a public service in a democratic state **Control of the** is peculiar. The Public Services are of course **legislature** entirely under the control of the people, who act through their elected representatives in the legislature. The latter body prescribes rules and regulations which determine their salaries, promotion, leave, pensions, etc. Yet a democracy is also a government. Its servants have a very important mission to fulfil. They are not required to take their orders from the

man in the street, nor are they liable to be chastized and dismissed by him.

The Public Services are established for satisfying some of the primary needs of organized human society. They have an enormous utility *per se*. The efficient performance of administrative functions requires great intellectual aptitude and training. Recruitment to the Services is therefore made by an open competitive examination, conducted by persons of the highest attainments and integrity. Thereby the poison of nepotism and favouritism is eliminated, and persons of the right calibre are selected. Security of tenure during good behaviour is assured to every servant. The prospects of his advancement are not decided by political considerations but only on the strength of ability.

In short, the bureaucracy represents a trained body of professional experts, whose knowledge and experience are of the highest benefit to the state. They are treated with great deference and respect even by their superiors, the Ministers. All the same, it must be clearly understood that the experts are not the masters. They are merely venerable advisers and servants of the State. Their opinions are sure to be invited and carefully considered before the formulation of policies, but it is the popular Minister who takes the final decision. The politician supersedes the administrator. The specialist has to adjust himself to the will of the sovereign and place all his technical skill at his service.

As long as the Indian Government was entirely bureaucratic, Double role of officers in the Indian Civil Service had to perform the I.C.S. both political and administrative functions. They decided policies and also carried them out. The Minister and the bureaucrat were combined in the same person. The grant of self-government to India introduces a fundamental alteration in this privileged status. In proportion as political power is transferred to the Indian people, the Services must inevitably recede into the background. The Ministers and the legislature will determine the purposes for which the mechanism of the state should be utilized, and the bureaucracy will have to carry out their wishes with efficiency and loyalty.

That the Services must be kept immune from the capricious influences of mere party politics, that it would be disastrous to allow them to be made the sport of party feuds and manoeuvres, is obvious. Interference by politicians in purely administrative details demoralizes both administration and politics. A democracy which is tempted into corruption is definitely on the road to ruin. The traditions of a high standard of purity, discipline, efficiency, detachment and self-effacement, which are such a noble asset of the British Civil Service, will have to be developed in this country also.

But this does not mean that India's superior Services should be legally kept beyond the authority of the Indian nation. That kind of independence would be thoroughly inconsistent with the reality of India's political freedom. The Act of 1935 contains a whole Part¹ devoted to an enumeration of the special privileges guaranteed to the superior Services. Their appointment is to be made by the Secretary of State even though they have to work under Ministers. Their salaries, promotion, leave, pensions, etc., are also fixed by the Secretary of State and not by the Indian legislatures though India has to bear the financial burden. Certain important posts are reserved to be filled by members of the I C S. No disciplinary action can be taken against these exalted subordinates by their popular superiors, the Ministers. The control of the legislature over this portion of the executive is thus substantially limited. This is a grave drawback to provincial autonomy.

¹ Part X, sections 232-77

XXXVII. THE WORKING OF PROVINCIAL AUTONOMY

§1. CRITICISM OF SPECIAL RESPONSIBILITIES

WHAT is the net achievement of the Act of 1935 in the sphere of provincial government? Is the autonomy conferred upon the provinces a substantial gain? To what extent has it brought about the real political advancement of the people? How far has it now become constitutionally possible for Indian leaders to translate into action some of their cherished ideals? Political organization is, after all, only a means. The material happiness of the community and its spiritual exaltation are the ultimate end. The important questions mentioned above will naturally have to be considered in the epilogue of any constitutional study.

There was very severe criticism of the Montford Reforms because in public opinion they were extremely inadequate. The Act of 1935 is supposed to go much further than the older measure, particularly in the provincial sphere. The clumsy structure of dyarchy has been abolished. The whole administrative machinery of the province is now entrusted to Ministers who are responsible to and removable by a popularly elected legislature. In appearance, at least, all these changes indicate a remarkable degree of political advance as compared with conditions in the past.

Unfortunately, the impression conveyed by such a broad, simplified outline is not the whole truth and is therefore misleading. It ignores those important provisions of the Act which are intended to operate as a vigorous negative force. In fact, the new constitution represents an ingenious blend of plus and minus, of addition and subtraction, of progress and regress. The hand that gave has also taken away. To what extent the two forces working in opposite directions actually cancel each other and what exactly is the nature and the size of the final remainder can only be revealed by experience.

The all-pervading Special Responsibilities of the Governor and the Governor-General and the numerous restrictions and safeguards affecting some of the most vital aspects of the administration lurk constantly behind in the constitutional picture, and may emerge at any moment to overwhelm the normal political routine. The Joint Parliamentary Committee emphasized that the safeguards are not mere paper declarations, dependent for their validity on the good will or timidity of those to whom the real substance of power is transferred. It has been said that the Act of 1935

does not introduce in the provinces a system of limited monarchy but a system of limited ministry. The Governor is not expected to retire into sublimated obscurity like the British monarch. His personality may prove an active force. His will may come to be frequently pitted against the will of the electorate. How such conflicts will end, to what extent the people will be able to have their own way, are questions which can be answered only by time.

However, the experience of three years' working of the new scheme which was inaugurated on 1 April 1937 is quite hopeful. In the first election to the provincial legislatures held in accordance with the provisions of the Act, the Congress Party was able to secure a clear majority of seats in six out of eleven provinces. Its leaders were therefore invited by the respective Governors to form Ministries. The Congress, however, demanded, as a condition precedent to the acceptance of the invitation, a definite assurance from the Governors that they would not exercise their special powers of interference so long as the Ministers acted within the constitution. As no such assurance was given, the majority party refused to form the government and there was a deadlock. Interim Ministries were formed by the minority parties and they temporarily carried on government till a few weeks before the legislatures were due to be summoned for their very first session. In other provinces, popular Ministries enjoying the confidence of the legislature began to function from the very beginning.

§2 THE VICEROY'S STATEMENT

In the meantime, in July 1937, the Viceroy issued a lengthy and comprehensive statement to clarify the whole constitutional position and to explain how the new machinery was expected to work in its daily routine. He desired to remove misapprehensions and misunderstandings that had arisen in the public mind. The following succinct summary is taken from the statement itself. It contains an authoritative pronouncement of the views of the Secretary of State, the Governor-General and the provincial Governors.

'The executive authority of a province runs in the name of the Governor: but in the ministerial field the Governor, subject to the qualifications already mentioned (in respect of Special Responsibilities) is bound to exercise that executive authority on the advice of Ministers. There are certain strictly limited and clearly defined areas in which, while here as elsewhere the primary responsibility rests with Ministers, the Governor remains ultimately responsible to Parliament. Over the whole of the remainder of the field Ministers are solely responsible, and they are answerable only to the provincial legislature.'

'In the discharge of the Governor's Special Responsibilities, it is open to the Governor, and it is indeed incumbent on him, to act otherwise than on the advice of his Ministers if he considers that the action they propose will prejudice the minorities, or areas, or other interests affected. The decision in such cases will rest with the Governor, and he will be responsible to Parliament for taking it. But the scope of such potential interference is strictly defined and there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a province, outside the limited range of the responsibilities specially confided to him

'Before taking a decision against the advice of his Ministers even within that limited range, a Governor will spare no pains to make clear to his Ministers the reasons which have weighed with him in thinking both that decision is one which it is incumbent on him to take and that it is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction. In such circumstances, given the good will which we can, I trust, postulate on both sides, and for which I can on behalf of His Majesty's Government answer so far as Governors are concerned, conflicts need not in normal situations be anticipated

'The design of Parliament, and the object of those of us who are the servants of the Crown in India and to whom it falls to work the provisions of the Act, must be, and is, to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people, and to avoid in every way consistent with the Special Responsibilities which the Act imposes, any such clash of opinion as would be calculated unnecessarily to break down the machine of government, or to result in a severance of that fruitful partnership between the Governor and his Ministers which is the basis of the Act, and the ideal, the achievement of which the Secretary of State, the Governor-General, and the provincial Governors are all equally concerned to secure.'

§3 POPULAR MINISTRIES IN OFFICE

After the issue of this statement the Congress Party decided to accept office, and the Government in eight provinces soon came into the hands of its leaders. It was found that, apart from the intrinsic difficulties and limitations of the Act, the Governors were, on the whole, working in a spirit of co-operation and goodwill with Ministers, many of whom had in the past actively participated in the struggle against a bureaucratic government and been

**Formation of
Congress
Ministries**

sent to jail for sedition or civil disobedience. A crisis did arise in February 1938 in the United Provinces and Bihar when the Ministries felt compelled to resign because the Governors concerned and the Governor-General could not agree with them on the question of the release of political prisoners. But even such a grave crisis was ultimately overcome by negotiation and explanation, and the Ministries returned to duty after it was made clear that it was not the Governors' intention to obstruct them. The same was true of the crisis that arose in Orissa over the appointment of a subordinate bureaucratic official as the Governor of the province. After the withdrawal of the Congress Ministries in November 1939, Mahatma Gandhi declared that the Governors on the whole had 'played the game'. It must also be said that the Ministers on their side endeavoured to remain within the bounds of the Act and did not give any provocation to the Governors to exercise their special powers. The cordiality of their mutual relations was publicly testified to both by the Ministers and the Governors.

The secret of the success of responsible or parliamentary government lies in the strength and effectiveness of Ministers. The strength and effectiveness of responsible Ministers depend upon the amount of support which they are able to command in the legislature, apart from the personal calibre of the men who form the Cabinet. A strong, well-organized, well-disciplined political party which succeeds in capturing a clear majority of seats in an elective chamber naturally becomes a mighty force. It reflects contemporary public opinion and is vitalized by the knowledge that it has a definite mandate from the public to carry out its programme.

When the leaders of such a party, conscious of its enormous strength, are installed in office as Ministers, it would be very difficult and also very imprudent for the Governor to try to domineer over them or to treat them with contempt. A conflict with persons who have an overwhelming backing both in the legislature and in the nation would be really a conflict with the people at large. No head of a province can lightly provoke such a grave calamity. He would be unable to obtain any alternative government, and in the end the constitution would have to be suspended.

After the establishment of popular Ministries consequent on the introduction of provincial autonomy, the whole atmosphere of provincial government radically changed. For the first time in the history of British rule in India, the sense of an unbridgeable distance, a profound gulf, between the government and the people has vanished to a great extent. The Ministers are known and felt to be of the people, organically one with them, leading the country and also being

led by it. That is the role played by Ministers in responsible democracies.

In fact, ministerial programmes are being pursued vigorously, even though they often involve serious departures from the principles and practices of the old order. There is dynamic activity in all respects. Questions like education, prohibition, tenancy, agricultural indebtedness, rural development, industrial wages and disputes, etc., are being tackled with promptness and energy. Most of the political prisoners in British India have been set free under the orders of the provincial Ministers, and a much more liberal concept of civil liberty has come to prevail. Two striking instances may be cited to show that in provincial subjects the transfer of power to the people of the province is found to be real. In 1938, the Bombay Ministry, with the full support of the legislature, restored to their original owners all lands that were confiscated by the previous bureaucratic Government as a penalty for having participated in the Civil Disobedience movements of 1930-2. At about the same time, the Madras Ministry ordered the removal of the statue of General Neill from its prominent public situation in Madras.

This quickened tempo in legislative and executive action must be attributed to the advent of provincial autonomy. Governors and the Services do seem to realize the inherent strength of a Ministry commanding immense popular confidence, and some salutary precedents in the operation of the new machine do seem to have crystallized. The Bihar and United Provinces crisis, already referred to, appears to have established the principle that whenever Ministers are prepared to take responsibility for the consequences of measures proposed by them, they will not ordinarily be overruled by the Governor.

Unfortunately, since the resignation of the Congress Ministries in November 1939, popular government in seven provinces was suspended and their legislatures also were not functioning. In a large part of India there was thus re-established the old system of bureaucratic rule. This abnormal situation continued till April 1946.

In a speech delivered in Bombay in February 1939, Sir Roger Lumley, Governor of Bombay, raised 'a part of the veil which shrouds the mysteries of a Governor's life' and gave a glimpse of the working of the constitutional machine. The following short summary of the speech will be found illuminating.

'On the Governor, I suppose, in former days lay the main

¹ So far as the Congress provinces are concerned, all this was true only as long as the Ministers were functioning.

responsibility for initiating the controlling policy. That is now the responsibility of his Ministers . . . and the most important service which the Governor can render . . . is to ensure that that is a reality.

'There are, I think, some people who imagine, and some who would like to see, a continual struggle going on between the Governor and his Ministers for control of policy. They are wide of the mark. These reforms would be meaningless if that were the case. There are others, I know, who have not yet become accustomed to this change, and who look to the Governor to deliver them out of all their afflictions. I can assist them by ensuring that their troubles are not overlooked, but the responsibility for decision on their cases lies with my Ministers, and I would not wish it to be thought otherwise. . . .

'Instead, therefore, of the continual interference which was, in some quarters, feared would be the result of these [the Governor's] special [powers and] responsibilities, there is rather a continual vigilance, watching to ensure that he should not be driven to use his powers, and this can lead to mutual co-operation .

'[The Governor] must preserve the spirit in which the Constitution was conceived, which was the spirit of self-government. he must be equipped to discharge the special functions laid upon him but without, as far as he can make it possible, disturbing that spirit, he has his own contribution to make, if he can, to the success of government and he must remain impartial, a neutral in politics, not a protagonist''

It is a truism of political science that a constitution cannot **Establishment** be judged merely by its language and external **of conventions** appearance. An attempt has to be made to find out the reality of its actual working, the traditions which mould its operation, the social purposes it strives to fulfil, the way in which the community reacts to its functional existence. A constitution often grows and takes shape by the development of customs and conventions, as is amply evidenced by the example of Britain. It is to be hoped that the special powers, responsibilities, and reservations which abound in the structure of the Act of 1935 will be rendered a dead letter in actual practice.

PART VI

GENERAL

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XXXVIII. SUB-DIVISIONS OF THE PROVINCE AND THEIR ADMINISTRATION

It is proposed to give here a short description of the system of administration in the province as distinct from the controlling organization at headquarters. An Indian province comprises a vast area, very often as big as the area of some of the larger countries of Europe. It would therefore be physically impossible to conduct its administrative business without further sub-dividing the area into smaller units and distributing Government authority amongst subordinate officers, with a supervising agency above them. There is great diversity of conditions in the provinces. There is also some variety in the scheme of decentralization of authority within the provincial area. However, the District is the unit common to all provinces.

In some provinces, the Districts are grouped together into bigger units called Divisions for purposes of administration. In Bombay for instance there are three such Divisions, the northern, the central and the southern, with their headquarters in Ahmedabad, Poona and Dharwar respectively. They follow, broadly speaking, the linguistic distribution of the province into Gujerat, Maharashtra and Karnatak. In some provinces, though not in Bombay, there is what is known as the Board of Revenue which functions in the capital. It is the chief revenue authority in the province and forms an appellate court in rent cases.

At the head of each Division there is an officer called the **The Commissioner and his duties**. Commissioner, who is a senior member of the Indian Civil Service. He is the principal adviser of Government as to the action to be taken on every proposal about district administration which has to go to Government from Collectors and from some other officers. He is also responsible for securing that the policy of Government in various matters is fully carried out by Collectors and some other officers.

The Commissioner has relations with practically every department of administration in his Division, though each operates directly under its own chief. In some cases his control is more effective than in others. For example, though the Inspector-General of Police is the head of the police department and looks after its technical side, the Commissioner is responsible for the general police administration in his Division, either through the District Magistrate or directly. Many important powers are also exercised by him in respect of municipalities, local boards and village panchayats.

The Commissioner has also to hear appeals against the decisions of the Collectors in matters of land revenue, and against the orders of the District Magistrates with respect to the maintenance of law and order under the District Police Act.

The District is invariably the unit of administration in all **The District** provinces and is therefore of vital importance. In size the District varies from province to province and even from place to place in the same province. Its area varies from two to ten thousand square miles and its population from one to three million souls. Its average size is given as 4,430 square miles by the Montford Report. Some of the bigger Districts exceed the population of Switzerland, or the area and population of Denmark. The officer in charge of the District is known as the Collector.

The Collector is the representative of the British Government **The Collector** in the District, representing the concentrated authority of British rule. He is in touch with every inch of territory in the District through his subordinates, the Mamlatdars and the village officials. The Collector is much more than the head of the revenue department in the District, and has been described as the pivot on which the District administration turns. He is expected to superintend the working of all the important departments within his territorial jurisdiction, and thus serves as an agent for maintaining the efficiency and coherence of the governmental machine as a whole. He has the dual capacity of Collector and Magistrate and performs a large number of functions of many kinds.

As a Collector he is responsible for the collection of land revenue both on agricultural and on non-agricultural land in the District, and also forest revenue. He holds abkari sales and issues licences to vendors of liquors and narcotic drugs like opium, and takes steps for preventing smuggling. It is his duty to administer the Watan Act, which deals with Inams, and to make grants of loans to needy agriculturists out of funds supplied by Government. The Collector is in charge of the treasury and is responsible for the 'due accounting of all moneys received and disbursed, the correctness of the treasury returns and the safe custody of the valuables which it contains'. He has some powers in respect of local bodies like municipalities, local boards, and village panchayats.

As a District Magistrate, the Collector has both executive and judicial duties. He is at the head of all the magistrates in the District and has himself the powers of a first-class magistrate. He can also hear appeals from the decisions of second-class and third-class magistrates. In fact he is responsible for the administration of the criminal law in the District. It is the duty of the District Magistrate to maintain law and order in the District, and for that purpose he controls the Superintendent of Police.

in administrative matters. He also issues licences under Acts like the Arms Act and the Petroleum Act.

The Collector is the district registrar, and as such controls the administration of the registration department. He has also to see to it that in matters of sanitation proper steps are taken by the local bodies, particularly on the outbreak of epidemics.

Collectors and their staff are officers intimately known to the people, coming into constant contact with them for a hundred reasons, and are the vehicles for conveying the orders of the Government to the people at large. During a large part of the year, the Collector has to move out to the different villages in his District, supervising the work of his subordinates and getting into direct touch with the people and the problems of administration. He is the eyes, the ears, the mouth, and the hand of the Provincial Government within his District and serves as its general representative.

The organization of the collectorate is 'so close knit, so well established, and so thoroughly understood that it **Varied nature of his duties** simultaneously discharges an immense number of other duties with ease and efficiency. Registration, alteration and partition of holdings, management of indebted estates, loans to agriculturists, settlement of disputes, and above all famine relief, are all matters which are dealt with by this agency'. The Collector is a 'strongly individualized worker in every department of rural economy'. Sir John Strachey said that because the Collector was the representative of a paternal, not constitutional, government he had to perform a large number of functions connected with a variety of departments like police, jails, municipalities, roads, education, sanitation, dispensaries, local taxation and so on. 'He should be a lawyer, an accountant, a financier, a ready writer of State papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering'. He is directed to keep himself informed and to watch the operation of everything that passes in the District. 'The vicissitudes of trade, the state of currency, the administration of civil justice, the progress of public works' must engage his attention as much as protection of life and property and maintenance of peace.

In short, the Collector of the District is the most important **Importance of his office** officer in the bureaucracy of India because of the first-hand personal knowledge that he has the opportunity to acquire about the people and problems of his District. He is in the closest possible touch with the realities of the situation. He enjoys a large measure of local independence and initiative. On his resource, efficiency and presence of mind depends the smooth course of administration in the District. Officers trained as Collectors in the various Districts of a province and who have therefore acquired the most valuable personal

experience and knowledge of the country with the government of which they are entrusted, are raised to the offices of Commissioners and Executive Councillors, and some to those of provincial Governors.

The capital city of the District is the Collector's head-
Other officers quarters. Here are stationed the heads and the offices of various specialized departments which have to function within the area of the District. Establishments for irrigation, roads and buildings, agriculture, industries, factories, co-operative credit, and medical relief, exist with their heads in most of the Districts to perform the special functions assigned to them. The District Judge, the Executive Engineer, the Civil Surgeon, the District Superintendent of Police, the Assistant Registrar of Co-operative Societies, are all officers who are the heads of their respective departments in the territorial jurisdiction of the District. They are controlled by their own departmental superiors, but the Collector has a considerable voice in regard to their administration. They have been compared to different sets of strings connecting the Government with the people. Their policies are influenced in a varying degree by the head of the District. He is always there in the background 'to lend his support or, if need be, to mediate between a specialized service and the people'.

The District is further split up into smaller divisions. These
Prant officers and Mamlatdars sub-divisions are under Prant officers who are either junior members of the Indian Civil Service called Assistant Collectors, or members of the Provincial Service styled Deputy-Collectors. The general revenue and magisterial charge of the sub-division is vested in the sub-divisional officer, subject to the control of the Collector. Arrangements within the division vary in the different provinces. In Bombay, the District is sub-divided into talukas, each of which has as its head an officer known as the Mamlatdar. He is to the taluka what the Collector is to the District, though in a diminutive measure. He has revenue and magisterial powers and has to supervise the working of the administration within his area. He has also other diverse duties. In fact, he is practically the general administrative officer of the Government in the area given to his care, namely the taluka.

Lastly, at the basis of the system comes the Indian village
Village officials with its organization of great antiquity still finding a place in the new system with certain necessary modifications. The headman, called the Patil or Patel, is the chief officer in the village and is responsible for the collection of revenue and the maintenance of peace in the village. He has the assistance of a talati or village accountant, who has to keep the village accounts, registers of holdings and, in general, all records of land revenue. The village watchman is the rural

policeman. Most of these offices were formerly hereditary and continued to be so till recently. The tendency, however, of modern times is to abolish the principle of heredity and to substitute a competitive test. The hereditary character of the kulkarni's or accountant's post has already disappeared and perhaps other posts may follow suit.

XXXIX. LOCAL SELF-GOVERNMENT

§1 IMPORTANCE OF LOCAL INSTITUTIONS

LOCAL institutions are an important part in the structure of **Government** a modern state. Some of the most vital and **ob-**
must create vious benefits of social life are obtained through
good conditions them. It must be remembered that government
of life is an instrument for the preservation and welfare
of human society. After all, what is the end and purpose of
all the complex political apparatus which civilized man has
developed and is still developing? It is to bring about the
moral and material happiness of the community, so that life can
signify energy, joy and growth even to the meanest citizen.
The constituents of this happiness in terms of visible utilities
and services are not difficult to enumerate. They have reference
to the actual routine of daily life.

For example, supplies of unadulterated milk, ghee, butter
Kinds of and other food-stuffs, plentiful filtered water for
social utilities drinking purposes, an effective drainage system
and other conservancy arrangements, healthy residential
quarters with clean and cheerful surroundings are important
factors which contribute to public health and comfort. Primary
and vocational schools, libraries, museums, gymnasiums, swim-
ming tanks, public parks and gardens, free medical dispensaries
and hospitals, smooth and spacious roads, quick transport by
bus and tram, fire engines, cheap gas and electricity service—
these are amenities which make life attractive and worth living.
They represent the fulfilment of organized human existence.

Yet it will be easily realized that in spite of their great nation-
al importance these subjects cannot be properly administered
by the central authority of a nation. They are essentially local
in their concept, local in the territorial extent of their utility
and operation, and can best be managed by the people who are
directly affected by the nature of the management. It is for
this reason that institutions like municipalities and local boards
have come into existence in all advanced countries. They are
elective bodies, and are invested with the powers of taxation,
action and decision in respect of a specific sphere of govern-
mental activity.

§2. GROWTH OF LOCAL INSTITUTIONS IN INDIA

Local institutions of some kind have always existed in the
social fabric of India. They formed an integral part of the
ancient Hindu polity, and also continued to function in Muslim
times. However, municipalities, local boards and village pancha-
yats as they are found today are the creations of British rule.

The Presidency towns of Madras, Bombay and Calcutta had **History of municipal government** from the early days of the **municipalities** East India Company. In 1850 an Act was passed in Bombay which provided that a municipal agency should be established in any town or suburb if the residents asked for it. A step forward was taken in 1873 when the principle of election was permitted. But it is with Lord Ripon's name that the establishment of local self-government in a liberal measure is associated. In 1882 his Government issued the famous Resolution, which has guided municipal legislation in all the provinces ever since.

The main points in Lord Ripon's reform were that in **Ripon's reforms** municipal bodies non-officials should preponderate, the system of election should be widely introduced, the chairmen should be non-official, that local bodies should have adequate resources and that Government control over them should be reduced. The object was declared to be 'to advance and promote the political and popular education of the people and to induce the best and most intelligent men in the community to come forward and take a share in the management of their own local affairs, and to guide and train them in the attainment of that important object'.

The Bombay Government passed an important Act in 1884 to give effect to these principles. Another Act was passed in 1901.

After the recommendations of the Decentralization Commission of 1909, the Government of India issued **Development up to the Montford Reforms** an important Resolution in 1915 enunciating their policy of progressive reform of local bodies. Soon thereafter Mr. Montagu's famous Declaration was made in Parliament, and the Government of India followed it up in 1918 with another Resolution affirming the necessity of removing all unnecessary official control over local institutions, making them as representative as possible and giving them powers that were real and not nominal. Executive action was taken in 1920 to implement these principles, when the franchise was lowered and the nominated element was fixed at not more than one-fifth of the total number of members of a municipality.

Local self-government became a Provincial and Transferred **Changes thereafter** subject after the Montford Reforms, and all the Provincial Governments displayed great zeal for the progress of local institutions. Many Acts for this purpose were passed in Bombay between 1921 and 1937. In 1924 the right of vote was given to women, and on the whole the constitutions of municipal bodies were liberalized during this period. A large percentage of the population secured the franchise and the powers of municipalities were increased. After the introduction of provincial autonomy the subject received further attention from the Ministries, and the Bombay legislature

passed in 1938 an important amending Act called the Bombay District Municipal and Municipal Boroughs (Amendment) Act. The main reform that it introduced was to abolish the system of nomination of members.

Local Boards are bodies which look after local affairs in rural areas. No such boards existed in India up to 1870, in which year the District Local Fund Committees were established. The decentralization scheme of Lord Mayo pointed to a possible advance in the scheme. After Lord Ripon's Resolution of 1882, the Bombay Government passed an Act in 1884 by which a local board was established for every District and also one for each taluka. The Collector was to be *ex officio* president, and the number of elected members was to be not less than one-half of the total number of members.

The position was reviewed in 1915, and, as the condition of the Boards was found to be unsatisfactory, certain changes were made. The number of nominated members was reduced, and in some selected Districts non-officials were appointed as presidents. The Bombay Local Boards Act was passed in 1923. It fixed the elective element at a minimum of three-fourths of the total number of members and enlarged the franchise considerably. The Act of 1938 abolished the system of nomination altogether and made all seats elective.

By the Act of 1935, the Bombay Government was empowered **Taluka Boards** to abolish taluka Local Boards whenever they considered it necessary in the interests of the public to do so. In the exercise of this power those boards were abolished in 1938. It was found by experience that the only body which could function efficiently for the whole area of the District was the District Board, and that the small organization for a taluka could have no effective resources or powers left to it.

The village has been the primary territorial unit of government organization in India from ancient times. **Village sanitary committees** Even today, about ninety per cent of the Indian people live in villages. Through all the vicissitudes of India's political life, the village has maintained its position intact to a great extent. In the opinion of some eminent writers it has served to conserve the vitality of the Indian nation. Village communities in ancient days were in many respects self-governing and were not much affected by the laws passed by the central authority.

In Bombay, after the advent of the British rule, village sanitary committees or boards were first formed by an Act of 1889. It was amended in 1931. These bodies have no power to impose taxes but may raise voluntary subscriptions and receive contributions from the District Boards. They are expected to help in improving the sanitary condition of the village. A

board consists of not less than seven members, as the Collector may direct, and of these not less than two-thirds must be elected. It is expected that these village committees and boards, as also the notified area committees, will be transformed in the near future into municipalities.

With the passing of the Bombay Village Panchayat Act in 1920 the first step was taken in introducing self-government in the village. As its working was not found to be satisfactory, further inquiries were made and another Act was passed in 1933. Panchayats were to be brought into existence on demand from the villagers, the franchise was extended to women, increased powers of taxation were conceded to these bodies, and they were permitted to try certain civil and criminal cases of a petty nature. Almost all the members were elected, though the patel was there *ex officio* and the Collector could nominate not more than two members. The panchayat was required to perform for the village those duties which municipalities performed for cities, and it could levy taxes on houses and lands, fairs and festivals, sale of goods, octroi, marriages, etc. By the Village Panchayat Act of 1939 provision has been practically made for adult franchise, and every village with a population of 2,000 and more must have a panchayat.

§3 CONSTITUTION OF MUNICIPALITIES AND LOCAL BOARDS

There are three types of municipalities in the province of Bombay. The first is represented by what is known as the municipal corporation which functions for the city of Bombay. Similar bodies exist for Madras and Calcutta. These are big cities and are given special treatment in view of their importance. Separate Acts are passed by the provincial legislature to prescribe the constitution, functions and powers of each one of these corporations. Their presidents are called Mayors.

The second type is represented by what were formerly known as city municipalities, and are now called borough municipalities. They function for cities the population of which is not less than 15,000, and are governed by the Bombay Municipal Boroughs Act of 1925, as amended subsequently several times, the latest amendments being passed by the legislature in 1938 and 1939. The number of borough municipalities is 28 at present.

In the third type are included municipalities of the smaller towns which have the right of having a municipality of their own. They are governed by the District Municipal Act of 1901 which has been amended several times subsequently, the latest amendments being enacted by the legislature in 1938 and 1939. The number of such District municipalities is 101 at present.

For the rural area of every District there is established a **District Board** or **Local Board**. The constitution, functions and powers of these bodies are prescribed by the Bombay Local Boards Act of 1923 as amended subsequently by several measures, the latest amendment having been effected in 1939. The number of these local boards is 20 at present.

The total number of members of a municipality or a **District Board** is to be determined by the Provincial Government from time to time and it varies according to the size and population of the area concerned. All the seats in these bodies are now elective, the system of nomination having been abolished in 1938. They elect their own presidents from among themselves and similarly elect vice-presidents.

The franchise for election to local bodies is now fairly low. **Franchise** For instance, in borough municipalities, the right to vote is conferred on those citizens who occupy as owners or tenants a house of which the annual rental value is not less than Rs. 12 or the capital value of which is not less than Rs. 200, and on all those who pay any tax other than octroi, toll, or a tax on vehicles and animals plying for hire. In the case of a District Board, all the residents of the District who are voters at elections to the Bombay Legislative Assembly, and also those who are assessed to any tax imposed by the board other than octroi or toll, are given the right to vote at the board's election. It has been estimated that according to this franchise, 21 per cent of the municipal population and 9 per cent of the population in the local board areas enjoy the right to vote. If adult franchise is introduced this percentage will go up to 50.

All the members of a municipality or local board constitute **The general body** what is known as its general body, which discusses and decides all questions of policy and important details in regard to municipal administration and problems. In the general body are vested the powers of passing the budget, imposing taxation, voting expenditure and making rules and regulations which have to be obeyed by the citizens. It represents the people within its jurisdiction and is the primary democratic body in the organization of the state. What the legislature is in the working of the Provincial Government, the general body of a municipality or District Board may be said to be in the working of local government.

For the convenient transaction of business and efficiency of **Committees** supervision, the general body of a municipality or local board is permitted to appoint various committees composed of its own members. The most important of these is the standing committee, which exercises general control over and takes the initiative in respect of the conduct of the municipal machine.

For carrying on the work of local government a trained and capable administrative staff is required. Municipalities and local

boards are therefore allowed to appoint officials like the chief **Executive officer**, the engineer, the health officer, the officer **officials** who looks after education, and so on. These are assisted by a large number of inspectors, accountants, clerks and menials. In the case of Bombay, Madras and Calcutta the chief officers are called municipal commissioners and they are generally senior members of the I.C.S. They are appointed by the Provincial Government except in Calcutta, where the appointment is made by the corporation itself. Otherwise, the executive of a municipality or a local board is now appointed and controlled by those bodies themselves.

§4 FUNCTIONS AND SOURCES OF INCOME

The functions of local institutions like municipalities and **Obligatory functions** local boards are divided into two classes, obligatory and discretionary. In the former category come the duties of lighting public streets and places, watering public streets and places, cleansing public streets and places, removing noxious vegetation, extinguishing fires, regulating or abating offensive or dangerous trades, acquiring and maintaining places for the disposal of the dead, constructing, altering and maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, tanks, wells, etc., obtaining supply of water, registering births and deaths, public vaccination, establishing and maintaining public hospitals and dispensaries, establishing and maintaining primary schools, etc.

Among the discretionary functions may be mentioned the **Discretionary functions** laying out of public streets, constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, rest houses, dharmshalas and other public buildings, taking a census, making a survey, payment of salaries and other monetary charges incidental to the maintenance of any court of a stipendiary or honorary magistrate, maintaining a farm or factory for the disposal of the sewage, and any other measure likely to promote public safety, health, convenience or education. The functions of local boards are, of course, mainly concerned with objects of rural importance and rural necessity.

The enumeration of the above lists will make it clear that **The need for local self-government** municipalities or local boards are entrusted with duties which can best be performed by local bodies. Local self-government is, in fact, a process of political devolution. The principle which underlies it involves the conception of local autonomy. Both in the larger interests of the State and in the narrower interests of the local area and its population, the delegation of powers and freedom to local bodies is considered to be desirable. It secures efficiency and economy of administration. What is more important, it has

an excellent educative effect, inasmuch as it supplies a training ground for politicians and public workers. The consciousness of liberty and the sense of responsibility and personal interest in the management of administrative affairs are moral influences in themselves.

It will be observed that District Boards are not called upon to perform exactly the same duties as municipalities in cities, though on the whole the nature of the two duties is the same. The District Board looks after the rural area of the District, the municipality is concerned with the urban limits of the city. The needs of the two may be slightly different, for instance, the maintenance of public roads for communication between village and village may be a more onerous duty for a District Board than the maintenance of streets in the city. Still, after allowing for the variation in the importance of particular items, the functions of municipalities and District Boards will be found similar to a great extent.

In order to enable them to incur the expenditure that would be involved in the performance of their duties, **Sources of income** powers of obtaining income by means of taxation and fees must be allowed to local bodies. Taxes can be levied upon and fees collected from the specific areas demarcated as belonging to the municipality or the Local Board. Their jurisdiction is precisely defined. The kinds of taxes which local bodies can impose are as follows: (i) A rate on buildings or lands or both, (ii) a tax on vehicles, (iii) an octroi duty on goods or animals or both, (iv) a tax on dogs, (v) a special sanitary cess on private latrines, etc., (vi) a general or special water rate, (vii) a lighting tax, (viii) a tax on pilgrims, (ix) a tax upon drainage, (x) general sanitary cess, (xi) a special educational tax, (xii) terminal tax, (xiii) toll on vehicles.

In the case of local boards, the most important source of income is the cess upon land. It can be collected at a rate of up to two annas in the rupee along with land revenue. Most sources of income that are available in a populated city are not available in rural areas and villages, and therefore a special source of income has to be devised for them. The imposition of local rates upon lands for local purposes is the most satisfactory method of giving income to the District Boards. The rates are collected by the same agency which collects land revenue for the Government, and the District Boards are not required to spend any large amount of money for the machinery of collection. The board can also levy tolls, profession taxes and a cess on the water rate charged by the Government to irrigated lands.

NL. JUDICIAL ADMINISTRATION

§1. IMPORTANCE OF THE JUDICATURE

THE judicature forms an integral part of the organization of the **Guardian of** state. Its chief importance lies in the fact that **civic privileges** it is specially charged with the duty of preserving and protecting those liberties, privileges and rights which the state itself confers upon its individual citizens. There are two possible dangers of invasion on that civic assurance. A private citizen may act contrary to law and endeavour to assert his superiority against a weaker victim. Or the same crime may be committed by officials of the state. Justice must be fully vindicated in both the cases. It is the function of the judiciary to study the law, to interpret it and to see that it is correctly applied. Judicial commands must effectively prevail even against the highest authority of the state or the most wealthy classes of its citizens if it is proved that they are guilty of illegal action. Such a guarantee constitutes one of the best safeguards for the preservation of human civilization.

It is therefore of the utmost importance that judges are men **Qualities required in a judge** of supreme integrity, of a fearless disposition and thoroughly independent and impartial in their outlook. They must also be profoundly learned in law and widely experienced in the affairs of men and the world. A capacity for cold, logical reasoning and also a sympathetic, human insight must be found mingled in their temperament. An attempt must be made by the state to discover persons of these requisite qualities and to create for them an atmosphere of judicial dignity and detachment, so that the danger of their being polluted by corruption of any kind is reduced to the minimum. A judge has been regarded as a very venerable person in the social life of all countries from very early times.

§2 HISTORICAL

There were elaborate judicial arrangements, according to the conceptions of those days, made by Hindu and Mussalman rulers in different parts of the country before the advent of British rule. The evolution of the present system must of course be traced to the early days of the East India Company.

There was no possibility of that body possessing large judicial **Early Charters** powers during the earlier half of their existence, when their mission and objective were purely commercial. The incorporating Charter of Elizabeth had allowed the Company to impose pains and penalties in order to exact observance of

the orders that they might issue to their servants. A proviso was added that the laws and punishment must be reasonable. This, of course, was purely a departmental power for enforcing discipline in the affairs of a commercial corporation.

The Charter of 1661, granted during the period of the Restoration, empowered the Governor and Council of each factory to judge the servants and subjects in all causes, civil and criminal, according to the laws of England. The Presidency of Madras decided to utilize the power thus granted, and appointed its Governor and Council to sit as a High Court for serious cases within its territory.

In 1669, when Bombay was granted to the Company by the Crown of England, provision was made to form two Courts of judicature, the inferior one consisting of a civil officer assisted by two Indian officers and having limited jurisdiction, and the Supreme Court consisting of the Deputy-Governor and the Council whose decisions were final. It appears that this was a temporary measure.

By a Charter granted by James II in 1687, power was given to constitute a municipality at Madras. The Mayor and the Aldermen were to be the Court of Record with power to try civil and criminal cases. Similar institutions were established in Bombay and Calcutta in 1726. The Mayors and Aldermen, as in the case of Madras, were to constitute the Mayor's Courts with civil jurisdiction, subject to appeal to the Supreme Court of the Governor or President and Council. In cases concerning sums exceeding Rs. 400, the appeal lay to His Majesty-in-Council.

The Governor and Council were constituted Courts of Oyer and Terminer¹ for the trial of all offences except high treason. European settlers in India did not submit to the indigenous law. It was assumed that they had brought their own legal system with them. At first, the tendency of the English was to make their laws public and to apply them to all those Europeans and Indians who were residing within the Company's area in any of the three presidencies. But the Charter of 1753 expressly excepted from the jurisdiction of the Mayor's Courts all suits and actions between native Indians only. Later measures still further restricted the scope of the English law.

The Regulating Act of 1773 took the important step of constituting the Supreme Court of Judicature in Bengal, which remained substantially unchanged up to 1862. It was to consist of a Chief Justice and four puisne judges, all nominated by the Crown. It was vested with all sorts of jurisdiction, civil, criminal, admiralty, ecclesiastical, and so on. Its jurisdiction in civil and criminal cases extended to all subjects of the Crown in Bengal, to persons in the service of

¹ Courts to hear and to determine.

the Company, and to any other persons who agreed in writing to submit themselves to the Court.

The history of the unseemly disputes between Warren Hastings, the Governor-General, and the Supreme Court is well known. The vague nature of the power of the Court gave rise to the question as to who was paramount, the Governor-General or the Court. The extent of the Court's jurisdiction was not clearly defined and it was not known whether all Indian inhabitants in the Company's dominions were or were not included within it. The conflict grew so intense that it had to be ended by an Act of Parliament.

The Amending Act of 1781 declared that the Governor-General and Council were not to be subject to the jurisdiction of the Court for acts done in their public capacity, nor were landowners or farmers or pensioners, only because they resided in the Company's territories. In the case of the citizens of Calcutta, the Hindu and Mohammedan laws were respectively applicable in the case of Hindus and Mohammedans, and that of the defendant party in cases where the plaintiffs and defendants differed in religion. The civil and religious usages and customs of the Indians were to be observed. The provincial Courts, both civil and criminal, were specially recognized as established by the Governor-General.

The Mayor's Courts at Madras and Bombay remained as they were until 1797, in which year they were superseded by Recorder's Courts. Finally, Supreme Courts on the Bengal model were established in Madras and Bombay in 1800 and 1823 respectively.

There had, of course, existed in India an indigenous system of judicial organization and of the application of the law. The Mussalman system of government was based on the combination of all authority, judicial, fiscal, and military, in the same hands. The Nabob was the Viceroy sent by the Delhi Emperor to govern distant provinces. He had two capacities. As Diwan he collected revenue and supervised the administration of civil justice. As Nazim he exercised criminal jurisdiction and controlled the police. Below the Nabob, the zamindar (or farmer of revenue) exercised civil and criminal jurisdiction. There were also special criminal courts, the highest presided over by the Naib Nazim and the others by judges who were designated Faujdars. The criminal law that was applied was exclusively Muslim, the civil law, either Hindu or Muslim as the case might require. The Diwani transferred to the East India Company the function of revenue collections and civil justice, the Nizamat being held as before by the Naib. The officials who conducted the business in both branches continued to be Indian.

With the declaration of the Directors in 1771 of their inten-

tion to stand forth as the Diwan and take upon themselves the **Warren Hastings** direct management of revenues, Warren Hastings, the Governor of Bengal, placed the entire administration of justice as well as the collection of revenue under the supervision of English officers.

Over each District was placed a Collector assisted by an Indian Diwan. The Collector and Diwan constituted the court of civil justice called the Diwani Adalat. In each District was also created a faujdari Adalat or a criminal court consisting of a kazi, a mufti and two maulvis with whom the Collector sat merely to watch the proceedings.

The appeal from the Diwani Adalat lay to the Sadr Diwani Adalat at Calcutta, which was composed of the Governor and Council assisted by Indian officers. The Criminal Appellate Court was known as the Sadr Nizamat Adalat. It was composed of a darogha, a mufti, a kazi and a maulvi, all appointed in the name of the Nazim. The court was first placed in Calcutta, but was later on removed to Murshidabad. Regulations for the procedure of these courts were formed by Warren Hastings, and they are described as being the first attempt at English legislation in India.

In 1774 judicial business was separated from that of revenue collection and different officers were appointed to look after each. Indian Amins were appointed for the administration of civil justice. In 1780, sixteen courts of Diwani Adalat were created and each was placed under the charge of a covenanted civilian styled the Superintendent. In 1781 Parliament expressly gave its recognition to the provincial Courts of the Company in the Amending Act of that year. The Governor-General-in-Council was authorized to frame regulations for the provincial Courts.

The advent of Lord Cornwallis effected considerable changes **Cornwallis** in the judicial administration. The Sadr Nizamat Adalat was re-transferred from Murshidabad to Calcutta in 1790. It was to consist of the Governor-General and Council together with the kazi and two muftis. In 1793 four Courts of Circuit, each composed of two or three covenanted civilians and assessors, were formed to transact ordinary criminal business.

In the case of civil justice, the separation between the duties of a Collector and those of a judge was finally effected. Cornwallis wrote: 'Individuals who have been aggrieved by revenue officers in one capacity can never hope to obtain redress from them in another.' The purely judicial powers of the Collector were now vested in the civil judge. Twenty-six civil judges in all were appointed.

Appeals from the civil judges lay to the four provincial Courts of Appeal, which were identical with the four Courts of Circuit entrusted with ordinary criminal jurisdiction. A further appeal

from these lay to the Sadr Diwani Adalat, that is the court formed by the Governor-General and Council. The newly created civil judges were also endowed with magisterial powers and could hold preliminary inquiries into important criminal cases and determine unimportant ones.

The two Appellate Courts, the Sadr Diwani and the Nizamat Wellesley and Adalat of Calcutta, were re-modelled in 1801 during the administration of Lord Wellesley. Instead of consisting of the Governor-General and Council they came henceforth to be composed of three or more judges selected from the covenanted service. Lord William Bentinck abolished the provincial Courts of Appeal, which had grown extremely notorious on account of their dilatoriness. In his time also full criminal jurisdiction was conferred upon civil district judges under the style of Sessions Judges, and the magisterial authority formerly exercised by the civil judges was transferred to the Collector. This measure has been described as retrograde in character inasmuch as it went against the principle of separation of executive and judicial functions.

Inferior courts of civil jurisdiction outside the Presidency Lower courts towns had been established by Lord Cornwallis. They had a limited jurisdiction. They were called Courts of Native Commissioners. Lord William Bentinck in 1831 created a new grade known as Principal Sadr Amins, whose jurisdiction was afterwards made unlimited in respect of value. These were later on transformed into subordinate judges in 1868. Similar inferior courts of civil jurisdiction within the Presidency towns, after passing through different phases, were finally shaped into the Small Causes Courts which have continued to function in that form to the present day.

The Indian High Courts Act of 1861 empowered the Queen to establish by letters patent High Courts of Judicature in Calcutta, Madras and Bombay. The old Indian High Courts Act of 1861 Supreme Courts and the Adalat Courts were abolished. Each High Court was to consist of a Chief Justice and not more than fifteen judges, of whom not less than one-third were to be barristers and one-third to be members of the Indian Civil Service. They were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction. Power was given to establish a similar court in the North-Western Provinces, which was done in 1866. In the same year, a Chief Court was established in the Punjab under an Act of the Indian legislature.

The simplification of law was attempted by the issuing of uniform codes, both civil and criminal. The former was published in 1859, the latter in 1860 and the Penal Code in 1861. The Indian legislature now regulates the constitutional jurisdiction of the ordinary civil courts. Between 1865 and 1873 Civil Courts

Acts were passed for each of the ten provinces, establishing a generally uniform system. The regulations of the Criminal Procedure Code of 1872 have made the constitution of the criminal courts uniform throughout the country.

The Indian High Courts Act of 1911 raised the maximum number of judges in a High Court from fifteen to twenty and gave power to establish High Courts as need arose, in any part of India. Power was also given for the appointment of temporary additional judges by the Governor-General-in-Council. Under powers obtained under this Act, High Courts were established at Patna, Lahore and Rangoon.

After dealing with the history and growth of judicial organization in India, it is necessary to proceed to a description of its existing condition. The Federal Court has been described already. We have now to describe the organization in the provinces

§3 ORGANIZATION IN THE PROVINCES

THE HIGH COURTS

At the head of the judicial organization in the provinces stand the Indian High Courts. These bodies were first created by the Act of 1861 and their constitution, powers, salaries, leave, etc., are now prescribed by sections 219-31 of the Act of 1935. Every High Court is composed of the Chief Justice and other judges, the maximum total number in each court, besides the Chief Justice, being fixed as follows: Madras 15, Bombay 13, Calcutta 19, Allahabad 12, Lahore 15, Patna 11, Nagpur 11, Oudh Chief Court 5; Sind, one Judicial Commissioner and five Assistants. All judges of a High Court are appointed by His Majesty. The Governor-General-in-Council may appoint additional judges, having the same status and powers as permanent judges, for a period of not more than two years. The judges must be either barristers of England and Ireland or advocates of Scotland of not less than five years' standing, or members of the Indian Civil Service of not less than ten years' service, at least three of which have been spent as District Judges or officials in Judicial service of a grade not less than the grade of a subordinate judge of at least five years' service, or pleaders of an Indian High Court of not less than ten years' standing. A judge can hold office until he attains the age of sixty years.

The salaries, allowances, leave, pensions, etc., of High Court Judges are fixed from time to time by His Majesty-in-Council. All this expenditure is charged upon the revenues of the province and is not votable by the legislature. The

following amounts of salary per year have now been prescribed. Chief Justices of Calcutta and Nagpur, Rs 72,000 and Rs 50,000 respectively, Chief Justices of the other High Courts, Rs 60,000 each, Judges of all the High Courts and the Chief Judge of Oudh, Rs. 48,000 each, Judges of the Oudh Chief Court and the Sind Judicial Commissioner, Rs 42,000; Judges of the Nagpur High Court, Rs 40,000

The jurisdiction of the High Courts is extremely wide, comprising as it does both original and appellate authority, including admiralty jurisdiction in case of offences committed on the high seas. They have all powers in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practices of the court. They have to superintend the working of all courts subject to their appellate jurisdiction and may for that purpose call for returns or direct the transfer of any case from one court to another and prescribe the rules of practice, and proceedings, and forms in which book entries and accounts shall be kept by them.

The High Courts have both original and appellate jurisdiction in civil as well as in criminal matters. They function as original courts for the Presidency towns in civil cases in which the amount of money involved exceeds Rs 2,000 and in criminal cases when these are committed to them by the Presidency Magistrates. As appellate courts they hear appeals both in civil and criminal matters from all places in the area under their jurisdiction, entertaining appeals also from their own original sides. The High Court judges being directly appointed by His Majesty to hold office during his pleasure, and their salary being fixed under law, that degree of independence which is required in the highest provincial tribunal is secured to them to a great extent.

There is a separate court known as the Court of the Judicial Commissioner in Sind. The High Court of Bombay had no jurisdiction over that province even before its separation from Bombay. The Judicial Commissioner's Court is the highest court of appeal in Sind and is also the District and Sessions Court of Karachi. Since September 1932 criminal and matrimonial jurisdiction over European British subjects in Sind is vested in it.

CRIMINAL COURTS IN THE DISTRICTS

Below the High Court there are subordinate courts for the disposal of civil and criminal business. We will deal with the criminal courts first. Every province is divided into sessions divisions, which are usually identical with the area of the District. For every such division, the local Government must establish a Sessions Court and appoint a Sessions

Judge and if necessary additional or assistant sessions judges. These Sessions Courts function in their prescribed territorial jurisdiction. They are competent to try all criminal cases committed to them and to inflict any punishment authorized by law. Every sentence of death passed by them is, however, subject to confirmation by the highest court of criminal appeal in the province. The Sessions Court is also a court of appeal against the decision of the magistrates subordinate to its jurisdiction.

Below the Sessions Court are courts of magistrates. These **Magistrates—** are divided into three classes. The First Class **First,** magistrate has power to pass a sentence of up to **Second and** two years' rigorous imprisonment and a fine of an **Third Class** amount up to Rs 1,000. The Second Class magistrate can pass a sentence of up to six months' rigorous imprisonment and a fine of an amount up to Rs 200. The Third Class magistrate can pass a sentence of up to one month's imprisonment and a fine of up to Rs 50. Territorial limits are assigned to the magistrates and a detailed schedule set out showing the grade of magistrates competent to try various criminal cases. They have power to commit to Sessions Courts those cases which are out of their competence.

In each District, the Collector, or the Deputy-Commissioner **District and** in the Non-Regulation Provinces, is appointed **Presidency** District Magistrate and in this capacity supervises **Magistrates** the work of other magistrates in the District. The subordinate revenue officials like Assistant and Deputy Collectors, mamlatdars, etc., have magisterial powers within their territorial jurisdiction. The District Magistrate distributes work among them. In the Presidency towns there are Presidency Magistrates, and in big cities City Magistrates, to dispose of criminal cases and to commit the more important ones to the High Court or to the Sessions.

Provision is also made for the appointment of honorary magistrates in big towns. Gentlemen of good social **Honorary** status who have leisure and who are desirous of **magistrates** doing public work are usually selected to fill the appointments. They usually work in a bench. They are divided into three grades of first, second and third class, and have the same powers as stipendiary magistrates in the respective grades. However, only petty cases are generally sent to them for trial, because they are not supposed to be experts in law.

Trial by jury in criminal cases is one of the most cherished **Jury and** privileges in a country like England. It has been **assessors** acquired after a good deal of constitutional struggle. To the political thinker, the existence of such a privilege may or may not appear to be an unqualified guarantee of the impartial carrying out of justice. To some, it might positively appear to

have large elements of imperfection which are bound to detract from the scientific and correct character of the verdicts given. The transaction of complicated judicial business by avowed amateurs, depending upon their common sense to discharge their duties, may not evoke enthusiasm in the mind of a critical theorist. But apart from the theory of the question, a description of the jury system as introduced in India is interesting.

Trial by jury is the rule in the original criminal cases before the High Courts. In the mofussil it is not considered always possible to empanel an efficient jury. Trials, therefore, are conducted either with the help of a jury or with the help of assessors. The difference between jurors and assessors is well known. The decision of the former is binding upon the judge, who rarely differs from them. The opinion of the assessors, on the other hand, is not binding and their advice may or may not be accepted by the trying judge. Where it appears to the Sessions Judge that the verdict of the jury is manifestly absurd or perverse, he has the power to disagree with them and refer the matter to the High Court, which has authority to set aside the verdict, and give its own decision in the case.

The jury in trials before the High Court consists of nine persons, and of an uneven number, prescribed by the local Government, in the mofussil courts. After the leading of evidence and arguments of counsels on both sides are finished, the judge explains the whole case to the jury, dwells upon the pros and cons of the case, explains the law under which the offence is alleged to have been committed, and leaves the final verdict to the discretion of the members of the jury. The latter adjourn for some time to deliberate among themselves and give either a unanimous or a majority opinion.

CIVIL COURTS IN THE DISTRICTS

The civil courts differ in nomenclature and in other respects. **District Courts** in the different provinces, though the essentials are the same. In Bengal, Agra and Assam there are three subordinate civil courts, the District Court, the Court of the Sub-Judges and the Munsiff's Court. In Bombay there are those of the District Judge and the Assistant Judge and the First and Second Class Sub-Judges. The officer who presides over the principal court of original civil jurisdiction in each District is known as the District Judge. He exercises control over all the subordinate courts within the District, and assigns to assistant judges the disposal of such suits as he deems fit. He has also to arrange for the guardianship of minors and lunatics and to manage their property. There is no limit to the pecuniary jurisdiction of the District Court in original civil plaints. It also works as an appellate court in cases which have been disposed of by the

courts of second class subordinate judges or in which the amount involved does not exceed Rs. 5,000.

Below the District Courts there are judges of two subordinate orders in the Bombay province. There are also **Subordinate judges** Small Causes Courts in important towns. The first class subordinate judge can try any civil suit irrespective of the amount of money involved. He has no appellate jurisdiction whatever. Appeals from his decision lie either to the District Courts or the High Court. The second class subordinate judge has power to try cases in which the sum of money involved does not exceed Rs. 5,000. He also has no appellate powers.

A first or second class sub-judge is sometimes invested with **Small Causes Courts** the summary powers of a Small Causes Court judge. The jurisdiction of the Small Causes Courts in the Presidency towns is limited to cases where the sum involved does not exceed Rs. 2,000, and in other important cities to cases where it does not exceed Rs. 500. There is no appeal from decisions of this court except on points of law and in certain cases which have been specified. Courts of such summary powers are intended to facilitate the recovery of small debts and the quick disposal of minor litigation.

In Bombay no subordinate judge could receive or register a suit in which any Government officer in his official capacity was a party. Formerly such cases had to be referred to the District Courts. The Civil Justice Committee of 1924-5 thought that such a restriction resulted in congestion of suits against the Secretary of State or officers of the Government, which the District Judge had no time to take up. Many such suits are of a minor character and therefore a relaxation of the restriction was necessary. The law was therefore altered recently, and subordinate judges can now entertain such plaints.

Another peculiarity of the Bombay system is the duty given to District Judges of managing a large number of estates of minors which are not administered by the Court of Wards. The routine management is done by the deputy-nazir. In consultation with him the judge has to carry out detailed supervision over matters connected with the revenue and expenditure of the estates of the minor and over his general health and upbringing.

It must be noticed that in Bombay the District Judge presiding in the civil court is also the person who **The District Judge and the Sessions Judge are the same person** presides over the criminal or sessions court. The two courts and their jurisdiction are different, but the presiding officer over both is one and the same person. In actual practice, therefore, the District Courts and the District Judges, because of the combination of civil and criminal functions in their persons, possess extensive powers. They are courts having powers both original and appellate. They are courts having both civil and criminal juris-

dictions Besides, they control all subordinate courts in their Districts and to that extent possess certain administrative functions The District Judge's office is therefore an office of importance It is generally filled by members of the Indian Civil Service Sometimes sub-judges are also promoted to that grade, or practising lawyers are directly recruited to hold the post Most of the Assistant District Judges are junior members of the Indian Civil Service and some are taken from among the sub-judges or members of the Bar They perform the duties that are assigned to them by the District Judge

Side by side with the civil courts there also exist what are **Revenue Courts** known as Revenue Courts They are presided over by officers who are charged with the duty of settling and collecting the land revenue In questions of assessment and collection, and in purely fiscal matters, the civil courts are generally excluded from interfering They can, however, take cognizance of all questions pertaining to the title of land, and of rent suits in some of the provinces, particularly in Bengal The Collector constitutes the Chief Revenue Court in a District, and appeal from him lies to the Divisional Commissioner

APPEALS

In the imperfect human world, even a trained judge is liable **A judge is not infallible** to err Sometimes his logic may prove to be faulty and his knowledge defective He may be unconsciously swayed by obstinacy, prejudice, or passion The conclusions at which he arrives in all sincerity may be at variance with facts Some method has to be devised to minimize the chances of the miscarriage of justice which may result from the inaptitude or the fallibility of the judge The system of appeals is instituted for that purpose

An appeal is a kind of petition and protest made by an **What is an appeal?** aggrieved party against the decisions of a judge In the nature of things, it must be heard by a superior tribunal, which can alter, reverse, or confirm the judgement of the trying court The judge who hears appeals is expected to have better qualifications and experience His verdict is supposed to be that of a wiser and more capable man.

There can be an appeal against an appeal by the same process **Number of appeals** of reasoning However, the number of appeals allowed in an individual case must be severely limited Otherwise, judicial business would become endless A halt has to be called at some point In India, two appeals are allowed in civil cases and only one in criminal cases Applications in revision are allowed in the latter after the first appeal is heard and decided

An appeal against the decisions of a second class or third class

magistrate lies to the District Magistrate or to any first class **Criminal** magistrate specially empowered by him. An appeal **appeals** against the decisions of a first class magistrate lies to the Sessions Court. An appeal against the decisions of the Sessions Court lies to the High Court. An application in revision can be heard by the Sessions Court against the judgement in appeal of a first class magistrate, or by the High Court against the judgement in appeal of a Sessions Court. In cases which are tried by a jury the right of appeal is restricted.

In civil cases, an appeal lies from the second class sub-judge **Civil appeals** to the District Court, and a further appeal from the latter to the High Court. An appeal from the decision of a first class sub-judge usually goes to the High Court, and a further appeal lies from the latter to the Privy Council. The High Court can call for, and examine the record of, any proceedings before the subordinate courts. Appeals in cases decided by the Original side of a High Court lie to its Appellate side, and if the question involved requires an interpretation of the constitution, to the Federal Court.¹

The highest appellate court that exists for India is what is **The Privy Council** commonly known as the Privy Council. This court has no original jurisdiction and it functions in England. It is the court which hears final appeals in important cases from all parts of the British Empire, and is for that reason looked upon as a common bond which connects the judicial administration of the various parts of the Empire. An appeal to this body lies from the decision of the High Court sitting as an original or appellate court. In civil cases the amount involved in the dispute must be Rs. 10,000 or upwards and in criminal cases some substantial question of law must be involved in order that an appeal to the Privy Council may be allowed. The appeal must be, not on a point of fact, but on a point of law. Permission must be granted by the High Court to file an appeal to the Privy Council.

It now remains to discuss two important and interesting questions pertaining to the judicial administration of India. One refers to the privileged position enjoyed by Europeans in matters of procedure. The other refers to the principle of separation between the executive and judicial functions of the Collector and other revenue officials.

§4 POSITION OF EUROPEAN SUBJECTS

Originally, in the earlier years of the East India Company, the only courts which exercised jurisdiction over Europeans resident in India were the courts in the Presidency towns. They were Crown courts as distinguished from Company courts. In

¹ For the appellate powers of the Federal Court, see p. 211

fact, before 1833, it was laid down that no British subject who was not in the service of the Company was to reside without permission at a distance of more than ten miles from the Presidency towns.

Early days of the Company's rule The abrogation of this restriction in 1834 called forth from the Directors an unequivocal acknowledgement of the principle that Indians and Europeans should be subject to the same judicial control and that there could be no equality of protection where justice was not equally, and on equal terms, accessible to all. Accordingly, Europeans were made amenable to the civil courts outside the Presidency towns in 1836. The question of their trial by all the criminal courts was raised in 1849 and in 1857, but no definite conclusion was arrived at. European British subjects were tried for criminal offences only in the Supreme Courts at the Presidency towns. With the creation of High Courts in 1861, such trials were referred to them. In 1872, when Sir J. Stephen was the Law Member, ordinary criminal courts were empowered to try Europeans, but under a special form of procedure which was then framed.

As the Indian Civil Service was thrown open to competition **The Ilbert Bill** and as Indians were allowed to occupy high offices **controversy** in virtue of their having passed the test, the question arose as to whether they could be prevented from trying European criminals. In 1883 some Indian civilians reached the stage when they would be promoted to be District Magistrates or District Judges. The Government felt that any restriction on Indians in the matter of trying European criminals must be abolished. They therefore introduced what has been since known as the Ilbert Bill enabling Indian Sessions Judges and certain Indian magistrates to exercise jurisdiction over European British subjects. The Bill aroused the most vehement opposition from European residents in India. The proposed equalization of the Indian and the European in the eyes of the law was so keenly resented by them that the Government had to bend to the fury of the storm, in 1884 a compromising measure was passed which enabled Indian judges and magistrates to try European criminals, and simultaneously gave to the British subject the right to claim a mixed jury, that is, a jury not less than a half of which consisted of Europeans.

The Racial Distinction Committee, which was appointed after the Montford Reforms to go into the whole question, thus summarized the principal distinctions between the trials of Europeans and Indians.

The Summary of the Racial Distinction Committee in Indian courts.

(i) No British subject could be tried by a second class or third class magistrate or by a first class magistrate who was not a Justice of the Peace or a District or Presidency Magistrate or a European British subject.

(ii) The jurisdiction of additional and assistant sessions judges was also much restricted.

(iii) The sentences that could be passed by a first class or a District Magistrate and a Court of Sessions against European British subjects were specially circumscribed.

(iv) Europeans were entitled to claim trial by a jury of which not less than a half would be Europeans or Americans.

(v) They enjoyed more extensive Habeas Corpus privileges.

(vi) They had more appellate rights in criminal cases than Indians

(vii) The usual terms of security for good behaviour might not apply to them if they could be dealt with under the European Vagrancy Act

(viii) The definition of a High Court was not so wide in their case.

The recommendations of the Committee were to remove some of these distinctions. The right to claim a mixed jury, that is one composed of not less than a half of the nationality of the accused, has now been extended to Indians and Europeans alike.

§5 THE SEPARATION OF THE EXECUTIVE FROM THE JUDICIARY .

The question of the separation of executive from judicial functions has been engaging the attention of Indian politicians for the last half century. In no part of British India indeed, at the present day, are executive and civil judicial functions combined in the same official. The same may be said of important criminal trials also. The Courts of Sessions and the High Courts, which are the superior criminal courts, are now presided over by officers who have no executive functions. The disputed question refers to the criminal jurisdiction that is still enjoyed by an executive and revenue official like the Collector or Deputy-Commissioner, who, in addition to his civil duties, has also the designation of District Magistrate. In that capacity he is vested with extensive judicial authority and a power of control over subordinate magistrates in the Districts. Similar powers are also enjoyed by Assistant and Deputy-Collectors and Mamlatdars of talukas.

The Collector is the officer who is held responsible for the peace of the District and is the superior of the District Police from the superintendent downwards, except in departmental matters. As a first class magistrate he can take cognizance of offences and exercise all powers that are exercised by a magistrate of his grade. He can hear appeals from the magistrates of the second and third class. He can also transfer a case from one subordinate magistrate to another in his District and can call for the record of any case disposed of by them and refer it

to the Sessions or High Court. His criminal powers are therefore wide

A good deal of criticism has been directed for a long time against such a concentration of power. A Memorial embodying a criticism of the system was presented to the Secretary of State in 1889 by some distinguished members of the judicial service in India. The grounds of criticism are various. The union of judicial and executive functions is considered to violate the first principle of equity. It is pointed out that the very natures of the two duties differ, and require for their proper discharge two distinct types of mental equipment and outlook which cannot be simultaneously possessed by the same officials.

In the execution of their civil administrative business, the Collectors may come into conflict with individuals or institutions and it would be inexpedient and unsafe to invest them with judicial powers which could be utilized against these. That absolute detachment and aloofness which is necessary for the impartial carrying out of justice cannot be possessed by a magistrate who is also responsible for the peace of the District and who is therefore likely to entertain an unconscious bias in one direction or the other.

Nor is the control exercised by the Collectors over subordinate magistrates calculated to secure to them an atmosphere of cool impartiality. Sir Henry Cotton, himself a distinguished member of the Indian Civil Service, declares it to be a matter of universal knowledge that 'subordinate magistrates whose position and promotion are dependent on the District Magistrate cannot, in such circumstances discharge their judicial duties with that degree of independence which ought to characterize a court of justice. Threats like 'the sentence is inadequate, if this occurs again, I shall report your misconduct to Government' are quoted in his *New India* from the correspondence between a District Magistrate and his subordinate.

The combination of the two functions engenders a general distrust about the magistracy and cannot therefore advance the prestige of the executive. The average citizen perceives in this unity of offices a danger to his civic liberty and an opportunity to Government officials for an effective display of vindictiveness. The Public Services Commission of 1916 readily agreed that the union of executive and judicial power in the Collector and his subordinates was theoretically an objectionable anomaly.

The advocates of the system maintain that in India no active public opinion in favour of the punishment of the wrongdoer has yet sufficiently developed and it is therefore necessary that the official agency should be endowed with an authority 'proportionate to the weakness of the support which it requires from the community at large'. It is also

urged that the speeding up of the machinery of criminal justice cannot be safely entrusted to the already overburdened Sessions Judges. The advantage of the present system, it is alleged, lies, not in the actual exercise of his powers by the Collector in numerous cases, for he uses them in comparatively few cases only, but in his holding them in reserve. To deprive the Collector of this power would weaken his authority and influence in the District and would strike a fatal blow to the peace and order in the country. Arguments like these are characteristic of the protagonists of the *status quo*.

To accuse a whole nation of insensibility to crime and to **Criticism** credit it with a degree of indulgence which might result in the acquittal of hardened criminals is indicative of the enthusiasm with which the supporters of the system are possessed and not of their capacity for a cool judgement. The plea for the maintenance of prestige is equally fallacious. Depriving the Collector of magisterial powers is not identical with diminishing the prestige of sovereignty. The separation simply implies a division of labour. It is not necessary to concentrate all the attributes and authority of Government in one and the same person to preserve the prestige of the ruling power. As the Memorial,¹ already referred to, points out, the Viceroy need not lose his prestige because he does not directly exercise the functions of the Collector and the District Judge. And in the same manner the Collector need not lose his prestige if his magisterial powers, the possession of which is apt to lead to miscarriage of justice and to inspire a feeling of distrust and suspicion in the administration, are transferred to another agency serving under the same Government.

To a student of the constitution the separation of executive from judicial functions appears to be *prima facie* necessary. That alone can maintain the equilibrium between the various aspects of government and guarantee liberty and justice to the individual. The raising of the financial bogey is futile. The scheme of separation may or may not involve a vast amount of expenditure. But even if it does, the plea of an increase in expenditure cannot be allowed to throttle such a prime and vital element in democratic polity.

It might be added that in the Presidency towns of Madras, Calcutta and Bombay, separation has already been effected, the Presidency Magistrates' courts being empowered to exercise the criminal jurisdiction which in the mofussil is exercised by the Collector. The Collector in Bombay and other Presidency towns is therefore purely a collector of revenue, and sooner or later he will function only in that capacity in all parts of the country.

XLI. LAND REVENUE

§1. HISTORICAL

A TAX upon land is one of the oldest forms of taxation. It was **Before the Company's rule** the principal source of income for governments in ancient times. The state claimed a share in the produce of the land. According to the description given by Manu, in ancient India the state's share in normal times varied between one-twelfth and one-sixth of the gross produce, and sometimes rose even to one-fourth if there was any exceptional calamity. Generally, it appears, the revenue was not collected from individuals but from a whole community which was represented by the headman.

With the advent of the Muslim power and its expansion throughout India, the system of land revenue collection underwent a change. Raja Todarmal, the famous revenue reformer in Akbar's court, regulated the settlement and collection of the State's shares in the income from land. He gave orders for the measurement of land and its classification according to the fertility of the soil. The Government demand was fixed at one-third of the gross produce. It could be commuted into a money payment on the basis of the prices of the previous nineteen years. The settlements were concluded for a fixed period, usually ten years.

A number of middlemen and tax-gatherers intervened between **Zamindars or middlemen** and the actual cultivator and the supreme power. They agreed to pay a lump sum of money for the portion of the country allotted to them and were armed with large powers to make the necessary collections from the villages. This class of middleman or farmer of revenue later on developed into the zamindar class. As long as the central power was strong, the zamindar was appointed regularly by a warrant which declared his duties and the amounts due from him. Usually he had to pay nine-tenths of the total collections and was allowed to retain one-tenth as remuneration for his labour. In addition, he was allowed some lands free of revenue for himself.

Originally the office of the zamindar was not hereditary, but with the decline of the central power, control over the zamindars slackened. They became more and more independent and practically established their sovereignty in the territory under their jurisdiction. Their payments to the central treasury became irregular. From being mere servants charged with the duty of collecting revenue, the zamindars developed into mighty potentates and assumed the position of independent Rajas.

The East India Company found themselves faced with this situation when they acquired the provinces of Bengal, Bihar and Orissa. For a few years after the grant of the Diwani, land revenue collection was left entirely in the hands of Indian officials according to Clive's plan. Two Naib Diwans stood at the head of the whole machinery. When this system broke down in practice, supervisors were appointed in 1769. The main functions of these officers were to 'determine the limits of estates held by the zamundars and the rent which the cultivators ought to pay them'. In 1769 the Directors also ordered the appointment of two Controlling Councils, one at Murshidabad and the other at Patna. The system did not work satisfactorily. The supervisors were not men of experience nor were they above corruption. The object with which they were appointed, namely efficient collection of revenue, was not achieved. In fact, supervisors became a nuisance to the landlord, to the ryots, and to the Company.

After the nomination of Warren Hastings to the Governorship of Bengal in 1772, reforms were introduced in land revenue collection. The Company had now decided 'to stand forth as the Diwan'. Warren Hastings therefore replaced the supervisors by new officers known as Collectors, who were to receive revenues which were farmed out for a term of five years. But even the new officers proved extremely unsatisfactory and were almost immediately withdrawn. In their places were appointed 'Indian local collectors under the supervision of six Provincial Committees' at Calcutta, Patna, Murshidabad, Burdwan, Dacca and Dinajpur. These Committees also did not work smoothly and were abolished in 1781 after investigation and report by a Commission of three officers appointed by Warren Hastings. A metropolitan Committee of Revenue was constituted in their place in Calcutta. Parliament recommended in the Act of 1784 that an inquiry should be conducted into the real position of zamundars, talukdars and jaghirdars under Mogul and Hindu governments and the amount of revenue they were bound to pay.

Lord Cornwallis arrived in India in 1786 with definite instructions to carry out the recommendation of Parliament. He caused 'elaborate inquiries to be made and rules were issued between 1788 and 1790 for a decennial settlement'. At the same time the introduction of permanent settlement was strongly pressed, and in 1793, the Directors having approved of the suggestion, a regulation announcing the establishment of permanent settlement was issued. Sir John Shore had conducted the inquiry and come to the conclusion that the zamundars were the proprietors of the soil having full rights of inheritance, sale and mortgage. The Company could not justly deprive them of these rights. Sir John

was in favour of making the settlement permanent after the agreements of 1789 had run their course. Cornwallis, however, differed and declared the settlement permanent in 1793.

The main features of the system were that the zamindars were declared proprietors of the areas in their possession, subject to their paying the land revenue; and that the assessment then fixed was declared unalterable for ever. Approximately ten-elevenths of what the zamindars received in rent from the ryots was to be taken by the State, the remaining one-eleventh being left to the zamindar. The percentage of Government claims thus fixed was very high. For several years there was widespread default in payment, and lands, the revenue of which had fallen into arrears, were immediately sold by auction. Sale laws were very stringent. In twenty-two years after the permanent settlement, one-third or half of the landed property in Bengal is recorded to have been transferred by public sale. Gradually, however, prices rose and the burden of the assessment became lighter.

As several more provinces came under British control, then other systems of assessments were gradually reduced to order. The varying circumstances of different tracts and areas were taken into account in introducing at first a tentative system and in allowing it to be crystallized in course of time. Different systems were thus evolved in Bengal, Madras, Bombay, the Punjab, Agra and other provinces of India according to the historical and customary practice obtaining in each area.

§2 THE EXISTING SYSTEMS OF LAND TENURE

Land revenue settlements in India are usually differentiated in two ways. The status of the person from whom the revenue is actually demanded forms one basis of division. When the revenue is 'assessed on an individual or a community owning an estate and occupying a position identical with or analogous to that of a landlord, the assessment is known as zamindari'. The individual or the community occupies the position of a middleman who does not cultivate the land himself but rents it out to farmers and tenants. The income from the land, in which the state claims a share, is the product of the labour of agriculturists and cultivators. The Government, however, does not hold them responsible for the payment of its dues. The zamindar who owns the estate is held responsible. He therefore collects money from the tenants and out of it pays the Government revenue. There is no direct contact between the authorities of Government and the cultivators of the land.

When revenue is assessed upon individuals who are the actual owners, occupants and cultivators of smaller holdings, the assessment is known as ryotwari. Here there is

no intermediary like the zamindar between the Government and the farmers who are themselves the proprietors of the land. Revenue is collected by the officials directly from the tillers of the soil in a large majority of instances though even in this system there are a few landlords and their land is cultivated by tenants

Another basis of division of land revenue settlements refers **Permanent** to the time for which the settlement is fixed. In a province like Bengal the amount of the share demanded by the Government is fixed for ever. The contracts made in 1793 between the Government and the landlords permanently fixed the sum to be paid by the landlord. There is therefore no question of enhancing the rate or the amount of the Government tax at any future date. Such a system is known popularly as the system of permanent settlement

Where the amount of the state demand is not fixed in **Temporary** perpetuity but only for a definite period, sometimes a year or ten years or twenty years or thirty years, at the end of which a revision has to take place, the settlements are known as temporary settlements. In such cases the share taken by the state may be increased or decreased at the end of the stipulated number of years.

It must be remembered that the two divisions are not mutually exclusive. A zamindari settlement might be permanent or temporary. A ryotwari settlement could also be permanent or temporary. Permanence is not an invariable attribute of the zamindari settlement nor would it be correct to suppose that all ryotwari settlements must be temporary. The zamindari in Bengal is permanent, that in Agra and the Punjab and the Central Provinces is not so. There is no instance in India of a ryotwari settlement which is permanent.

The system in Bengal has been already described. The **Madras** system prevailing in Bombay and a large part of Madras is ryotwari. In the beginning, attempts were made in Madras to introduce permanently settled zamindari estates as they existed in Bengal, but they met with failure except in a few tracts. After considerable discussion, therefore, Sir Thomas Munro introduced the ryotwari system. The cultivating proprietor is in this system at liberty to relinquish his holding.

Most of the territory in the Presidency of Bombay was acquired **Bombay** after the downfall of the Peshwas, in whose time the practice of farming out revenues was in vogue. The British Government abolished the system of farming, but its earlier attempts at a regular settlement did not succeed. A new system was tried in 1835. Soils were divided into nine classes based primarily upon their depth and quality of texture, and fields were assigned to these classes. An assessment rate was fixed for each class after careful investigation into the average yield

of its soil, allowing for the uncertainty of rain and other circumstances on which crops and prices depended. The rates were then applied to determine the amount of land revenue due from a particular field. The system was empirical but showed extremely encouraging results. It was soon extended to the whole Presidency, and to Sind, after it was acquired and annexed to the Bombay Presidency.

The settlement in Benares was declared to be permanent in **Agra** 1795. The Directors, however, refused to sanction a similar measure for the province of Agra. The first regular settlement in this part was completed between the years 1833 and 1849. It was concluded, wherever possible, with village proprietors under a zamindari system with joint responsibility. Hereditary tenants or those who had resided in the same village for twelve years were given rights of occupancy. The assessments were fixed at sixty-six per cent of the rental assets. They were later reduced to fifty per cent by the Sharanpur Rules of 1855. The soils were classified and standard rates of rent were fixed for each class.

In Oudh, the talukdars were given full proprietary rights. **The Punjab** They contracted to pay a fixed sum of revenue for definite tracts of land. In the Punjab, as in the North-Western Provinces, there were bodies of villagers who claimed descent from a common ancestor who had either founded the village or received a grant of it from some ruling monarch. The system of village or mahalwari settlement was therefore adopted in the Punjab. Its term was fixed at thirty years.

In the Central Provinces, the zamindari system was introduced **Central** in a modified form. Revenues were farmed out to **Provinces** individuals known as patels or malguzars in the time of the Marathas. The villagers, however, were not connected by ties of blood like the villagers in the Punjab or Agra. The revenue farmers soon acquired a quasi-proprietary position. Their claims were allowed by the British rulers and they were held responsible for the payment of land revenue. This settlement is known as the malguzari settlement. It is liable to periodical revision.

In no part of India does land revenue now represent a portion **Revenue** of the gross produce. In the United Provinces, **assessed on** the Punjab and the Central Provinces, the Govern- **ment demand** is theoretically based on an **income** economic rent. It is assessed on the amount of rent paid by the tenants to the landlords. In the case of ryotwari provinces like Madras and Bombay, the assessment is based on the net produce. The figure of the net income is arrived at after deducting the expenses of cultivation from the gross income. Actual calculations may be made to find out the expenses and the net income in particular fields as is done in Madras; or,

as is done in Bombay, an empirical rate may be arrived at for a certain area by taking into consideration the classification of the soil and the general economic conditions of the tract. This rate is then expressed in a sliding scale and applied to different fields in accordance with their fertility.

§3 CONTROVERSY ABOUT THE PERMANENT SETTLEMENT

One of the most disputed questions in the Indian land revenue administration is the desirability or otherwise of extending the system of permanent settlement to the whole of India. Mr R C Dutt, the eminent Indian civilian and scholar, was an ardent advocate of such an extension. He wrote incessantly on the subject, and Lord Curzon's Government thought it advisable to review his criticism of the Government policy and to give a reply. Their conclusions were summarized in a Resolution which was issued by the Government of India in 1902.

The arguments put forward in support of permanent settlement were:

- Advantages**
- (i) That it would be a protection against the ravages of famines
 - (ii) That the expenses and harassment of the assessment operations would be avoided
 - (iii) That there would be no temptation to abandon cultivation on the approach of a revision
 - (iv) That it would result in an accumulation of capital which could be utilized for investment in industries.
 - (v) That people could lead a fuller and more contented life.
 - (vi) That the immediate loss of revenue would be more than compensated by the indirect but certain benefit accruing from the system in the future.

Fixity of the state demand would remove any uncertainty in the mind of the cultivator about the amount that he would have to part with. There would be no lurking fear that the investment of his capital and labour in the improvement of the land might be penalized by the Government claiming an increased share just when the improvements fructified. Besides, the creation of an aristocratic and leisured class in the community was expected to produce some beneficial results in promoting the arts, sciences, and learning, and thus raise the cultural level of the people. In short, it was contended that from the economic and also from the social point of view, permanent settlement was the most beneficial arrangement in land revenue administration.

It was stated on the other hand in opposition to these points:

- (i) That the evidence of facts did not justify the description of permanent settlement as a protection against famines. Famines had not been less frequent nor less harmful in permanently settled areas.
- (ii) That it was part of the deliberate policy of the Government to simplify and cheapen the proceedings in connexion with settlements.
- (iii) That the policy of long-term settlements was being encouraged.
- (iv) That over-assessment was not proved to be a cause of the widespread poverty and indebtedness of the agriculturist in India.
- (v) That progressive moderation in assessment was the keynote of the Government policy.
- (vi) That improvements introduced by the cultivators or the landlords were exempted from assessment even in temporarily settled areas.
- (vii) That the Government had to interfere to safeguard the tenants from the tyranny of ruthless landlords.
- (viii) That permanent settlements deprived the revenue system of any elasticity which could facilitate an adjustment to the variations of seasons and the circumstances of the people.

That settlement of revenue from land in perpetuity could not be a theoretically sound proposition would be readily admitted by any student of economics. It is unjust, and even ridiculous, to commit all future generations to a course of action which appears most suitable to a particular time. It is extremely disadvantageous to prevent the state from having a proportionate share in the increasing income of the community. Such an embargo makes it financially impossible for the state to undertake any big scheme of public welfare made possible by modern conditions. From the point of view of economic science also, it is unfair to allow the unearned increment from land to be appropriated by a few private individuals. All economic rent ought to belong to the community, and the State as the representative of the community is alone entitled to receive it. It is not unlikely that the popular ministries in autonomous provinces may take steps to modify or liquidate the system of permanent zamindari settlement. It may be added that the introduction of permanent settlement in only one province of India created inequality and subjected the other provinces to heavier taxation.

After the Montford Reforms, land revenue became an entirely provincial subject and was one of the main sources of income for the Provincial Governments. It was, however, not a Transferred subject. The Government of India retained a larger control over its adminis-

tration, particularly over the question of modifications in the methods of settlements. Some of the provinces appointed committees to investigate into and make recommendations for reforming the present system. Such a committee was appointed, for instance, in the Bombay Presidency. In fact, a good deal of interest has been aroused in the subject, and discussion has centred round the question of finding the most suitable method of improving existing conditions. The peasant agitation in the Bardoli Taluka of the Bombay Presidency in 1921 helped to focus attention on the land revenue reform, particularly in the matter of revision of settlements.

The Indian Taxation Committee considered the question from various points of view. Several thinkers have pointed out the iniquity of the incidence of land and income-tax taxation as compared with that of other taxes. It is suggested that a more proper and just course would be to approximate the system of land revenue collection to that of collecting the income-tax. In a province with a preponderance of small holdings, such a reform may mean enormous loss of revenue. The question, however, bristles with difficulties and it is not possible to discuss it in all its bearings in the present work.

34 LAND REVENUE RENT OR TAX?

Reference may finally be made to a controversy which has been going on for a long time but which has now ceased to have any great practical importance. Dispute has centred round the question whether land revenue is a tax or rent. If it is a rent the proprietorship of the state over all the land in the country is by implication admitted. Those who do not support the doctrine of state ownership look upon land revenue as a compulsory payment made to the state just as all other taxes are compulsory payments.

Indian public opinion has generally taken this view. The report of the Taxation Committee has quoted a large amount of evidence in favour of the contention that land revenue is a tax and not a rent. Baden-Powell has been very guarded in his statement of the position of the British Government with reference to the Indian land system. The zamindars have been expressly acknowledged as the proprietors in large areas. Even in ryotwari tracts where the cultivator-owners are supposed to be tenants of the state, they enjoy all the privileges of ownership including the right of sale, mortgage and transfer, subject to their payment of the Government dues. As long as these are paid, the 'tenants' cannot be dispossessed of their estate by the theoretical owners. No very great significance therefore attaches to the practical aspect of the question.

Difference of opinion exists on the question whether land

revenue is a direct tax or an indirect tax. The fact that it works partly as a tax on income and partly as a tax on things makes it difficult to state exactly whether it is direct or indirect. However, theoretically at least, the bias is in favour of describing it as a direct tax.

§5. LAND REVENUE ADMINISTRATION

Land revenue became a Provincial subject after the Montford Reforms and continues to be so after the Act of 1935. In the province of Bombay it is the primary duty of village officials like the Patel or Patil and the Talati to make collections of land revenue from owners of land in the village. Their work is supervised and checked by Circle Inspectors, Mamlatdars and Assistant Deputy Collectors. As has been explained previously, the Collector of the District is mainly a revenue official and he is responsible for proper and systematic collections within the area in his charge. Above him is the Commissioner of the Division and at the head of the department is the Minister for Land Revenue.

There are separate departments and offices for carrying out survey and settlement operations. Records of rights are accurately maintained in every village, giving the names of all persons who are holders, occupants, owners or mortgagees of land, the nature and extent of the respective interest of such persons, and the rent of revenue payable by or to any such persons. Settlement Commissioners and Superintendents and Inspectors of Land Records are special officers who supervise the working of this aspect of land revenue administration.

XLII. THE PUBLIC SERVICES

§1. EARLY HISTORY AND ORGANIZATION

THE East India Company had to appoint a large staff of **Servants employed by the East India Company** merchants, factors and writers to carry on their commercial business. When, at a later stage, the Company began to take an active part in Indian politics, their officers were called upon to play the role of administrators and generals. With the completion of the conquest and the growing sense of stability in their new status, the purely military bias of the Company's outlook gradually began to lessen. They became more and more conscious of the obligations of a civilized government in times of peace. The number of officers in their service began to increase and the nature of their duties became much more diversified.

The recruitment of the proper type of men for service in a state is always a difficult problem. It becomes more so when they have to be sent out to rule over a conquered country. The civil and military services in India are not only required to perform all those functions which similar services perform in independent countries, but in addition, it is their responsibility to maintain the supremacy of the conqueror over the vast territorial area which has come into his possession as a consequence of wars, annexations and treaties.

The power of appointing civil and military servants and of making rules and regulations for their guidance was given in the original Charter of Elizabeth and it was extended from time to time. The definite acquisition of political status by the Company after the grant of the Diwani in 1765 made the public services more important and responsible. It was not, however, till 1772 that the Directors decided that the Company should themselves stand forth as the Diwan and take the administration of the ceded provinces into their own hands. Between 1765 and 1772 the administration work of the Company was left to be done by the subordinate agency of Indian officials. After the decision of the Directors had been announced, Warren Hastings appointed European officials known as Collectors to supervise the working of revenue collection and civil judicial business.

It was not till the time of Lord Cornwallis that the direct administration of all branches of the public services was placed on a clear and permanent basis. He endeavoured to 'purify' the services by excluding Indian officers from the superior grades and offices. A college was soon set up at Calcutta to impart training in law and oriental languages to the newly recruited junior

officers In 1806 Haileybury College was formed by the Company in England. Admission to this institution was obtained through nomination by the Court of Directors and the candidate had to pass a test examination after a two years' course. The successful candidates were appointed to various posts in the Company's service.

At the time of the Charter Act of 1853 the principle of throwing open the Civil Service to general competition was accepted and it was further reaffirmed after the transference of government from the Company to the Crown. With the growing extent of the territories of the Company and the increasing complexity of the obligations of government, it was found necessary to nominate persons, technically outside the Company's civil service, to fill certain posts which had to be created under the exigencies of administration. Such appointments were later on validated by an Act of Parliament.

Thus, till the middle of the nineteenth century, the only passport to the superior Indian Services was nomination by the Court of Directors of the East India Company. It was a very unsatisfactory system, based as it was on patronage and corruption, and not on a test of merit. The task of keeping an empire demanded the devoted labours of men of real ability and character. It was not easy to discover such persons by nepotism. After 1853, and more particularly after the abolition of the East India Company, the Indian Civil Service was thrown open for general competition. An examination began to be held for that purpose in England and Indians were permitted to compete for the service.

The privilege, however, was quite theoretical and academic. **Indians and the I.C.S.** so far as the people of India were concerned. Its practical utility to them was negligible. In the nature of things, the number of Indian students who could avail themselves of the opportunity thus offered was extremely small. The cost of staying in a distant foreign country with a very high standard of living was prohibitive to the citizens of a poor country, its environment and society were absolutely unfamiliar, and the chances of success were exceedingly uncertain. A pilgrimage to England for appearing at the I.C.S. examination was too great a risk or too great a luxury for clever Indian students of ordinary means. Only one Indian had successfully come out of the ordeal till the year 1870.

In that year an Act was passed which permitted Indians of proved merit and ability to be employed in the Civil Service without their passing through the course in the regular prescribed manner. Very few appointments were however made under this Act.

In 1879 rules regarding such selections were reconsidered.

Young men of good family and social status were to be given special preference, provided they possessed the necessary intellectual qualifications. Even under the revised regulation, however, the scheme of making direct recruitment to the covenanted service initiated in 1870 did not prove successful, and the Government therefore appointed a Commission to inquire into the best possible methods of admitting Indians to higher employment in the public service. The report of the Commission was submitted to the Government of India in 1887. It made some important recommendations.

Following the recommendations of the Commission the Civil Service was divided into three classes: the Indian Imperial, Provincial and Subordinate Services. The old terms of 'covenanted' and 'uncovenanted' lost their significance. Important executive and judicial posts in the provinces were to be held by members of the Provincial Service. Admission to it was regulated by rules framed by the local Governments and approved by the Government of India. It was obtained either by nomination or by examination or by promotion. Offices like those of the Deputy-Collectors and subordinate judges, were reserved for the imperial grade. The Subordinate Services were to hold minor offices, and included most of the clerical staff of various departments. With the attempt at an all-round development of the country, need arose for the appointment of officers with special training for the handling of technical matters connected with the Public Works Department, survey work, agriculture, posts and telegraphs, education, police, salt manufacture, etc. These Services were also organized into the three grades of Imperial, Provincial and Subordinate, according to the control that was exercised over them by the Government of India or the Provincial Government.

Appointments to the Imperial grade in all branches of the administration were made by the Secretary of State. All the Imperial officers did not serve under the direct orders of the Central Government. Most of them were assigned to different provinces and, normally, were not transferred from province to province.

The Royal Commission on Public Services which assembled in 1912 and was presided over by Lord Islington made a detailed review of the public services in India and explored the possibilities of the employment of Indians in the superior Services. Owing to the declaration of War in 1914 and the preoccupation caused by its prosecution both to the British and Indian Governments, consideration of the recommendations of the Islington Committee was deferred. In the meanwhile the Secretary of State had made the famous Announcement of August 1917 putting into the

forefront the contemplated increased association of Indians in every branch of the administration and the introduction of responsible government. The War had also immensely affected the cost of living. These new factors had created new circumstances and the recommendations of the Islington Committee had become quite obsolete.

We will first summarize the position of the Services before the Montford Reforms. As the Islington Report pointed out, the Indian Civil Service was always regarded as the senior of all Services, and the one upon which the responsibility of good government ultimately rested. Posts of general supervision were filled by its officers, on both the executive and political sides of the administration. A variety of departments such as land revenue, excise, income-tax, and stamps, were controlled by them. Supervision over the working of local self-government and the maintenance of peace and order were included in their functions.

Beginning ordinarily with the headship of the District and passing through the commissionership of divisions and membership of the Executive Council, Indian Civil Service officials might reach the posts of Lieutenant-Governor and Chief Commissioner. Similarly they might rise to the status of High Court judges.

Certain specified posts in the Services had been reserved for the Indian Civil Service. They were mentioned in a separate schedule in the Government of India Act of 1919. With the exception of the Governor-General, Governors, and some memberships of the Executive Council, practically all places of superior control were held by them.

As the Montford Report said, the Indian Civil Service had been in effect much more a Government corporation than purely a Civil Service in the English sense. The men in this Service are described as having been entitled not only to administer but also to advise. They were habituated to the exercise of responsibility, in emergencies they had to depend upon their own judgement, they acquired a large stock of practical knowledge. Unlike the civil servant in England, the civil servant in India took his place in the Legislative and Executive Councils and assisted in the formation of policy. He was not controllable by the people of the land but by a distant paramount power which necessarily had to leave a large amount of discretion and initiative to the men on the spot who were burdened with the responsibility of preserving and managing the Sovereign's domains in far-away lands.

§2 AFTER THE MONTFORD REFORMS

After the Announcement of 1917, things necessarily changed. The Montford Report gave its consideration to the question of

the Services The demand for Indianization was unanimous and
Montagu- persistent. The spirit of the new policy made it
Chelmsford indispensable that Indians should be associated in
Report larger numbers in the various branches of the
 administration. It was necessary to train them in the art of
 government and to make their criticism more sober and prac-
 tical. The Montford Report definitely stated that recruitment
 of a larger proportion of Indians should be begun at once, though
 there was to be no swamping of the European element. The
 authors of the report did not look upon such a violent change
 as either desirable or possible

In the Indian Civil Service it was proposed that a proportion
Indianization of thirty-three per cent should be held by Indians,
 increasing annually by one and a half per cent, until the situation
 was again reviewed by a Commission. They also recommended
 that the few remaining racial distinctions governing admission
 to the Services should be abolished. It was further suggested
 that for all the public services for which there was recruitment
 in England, open to Europeans and Indians alike, there must
 be a system of appointment in India, a definite percentage of
 appointments being made from among the candidates examined
 in India. In accordance with this recommendation, the I.C.S.
 examination began to be held in India from 1921, for filling
 in a certain number of vacancies. Delhi is its venue at
 present

Improvements in the rates of pay and incremental time scale
Improved and greater elasticity in the leave rules and other
prospects details were thought absolutely necessary. The
 intention of the authors was declared that any public servant,
 whatever the Government under which he was employed, should
 be properly supported and protected in the legitimate exercise
 of his functions. To the Government of India or the Governor-
 in-Council must be left unimpaired the power to secure to a
 civil servant any rights and privileges guaranteed or implied in
 the conditions of his appointment

The friction which a change in the long-established system
The European was likely to produce was sought to be avoided by
element inducing the habit of goodwill and toleration bet-
maintained ween the officials and the popular element of the
 Government. The experience and continuity supplied by the
 former would be, it was imagined, of great value to the latter.
 Even in the provinces where dyarchy was introduced, there
 was no intention to introduce any duality in the Services. No
 separate hierarchy of officials was created for the Transferred
 half. It was not possible, in the opinion of the authors of the
 report, that all Europeans should be eliminated from the Services
 in the new dispensation inaugurated under the Reforms.

The Government of India Act of 1919 dealt in a separate

part with the Services in India. According to it, every person in the Civil Service of the Crown in India held office during His Majesty's pleasure and could not be dismissed by any authority subordinate to that which appointed him. An aggrieved officer had the right to complain to the Governor. The Secretary of State regulated the classification of the Civil Service, the methods of recruitment, and the conditions of service. Functions regarding recruitment and control were to be performed by a Public Services Commission of five members to be specially appointed. Under Secretaryships could no longer be held exclusively by the Civil Service. Similarly the Secretary, Joint Secretary, and Deputy Secretary in the Education, the Foreign and the Political Departments, and the Secretary and Deputy Secretary in the Legislative Department might be non-civilians.

The new policy of the Act of 1919 had important consequences. A feeling of uncertainty and fear was created in the mind of the civil servants because they were henceforth likely to lose their bureaucratic independence and to be held answerable to the Indian public as represented through the legislatures. The British element in the new recruitments began to dwindle. A committee under the presidency of Lord MacDowell investigated the causes of the decline and suggested certain remedies. In order, however, to solve the problem more definitely, a comprehensive survey was thought necessary, and a commission presided over by Lord Lee was appointed in 1923 to go into the question. The Indian Legislative Assembly was opposed to the appointment of the commission, and refused to sanction the money necessary for its expense, which was ultimately certified by the Viceroy.

The Commission made detailed recommendations, several of which were accepted by the Government of India. The all-India Services serving in the Reserved part of the provincial administrations were to continue to be appointed and controlled by the Secretary of State and their position was to be safeguarded by legal covenants enforceable in civil courts and by the Public Services Commission, to whom appeal was to lie against Provincial or Central Governments. Civilians serving in Transferred departments could either retain their all-India status or enter into new contracts with the Provincial Governments or retire on proportionate pensions. Large financial concessions to European members of the Services were granted, the overseas allowances granted to officials of non-Asiatic domicile being substantially increased in a certain number of years. Further, this could be remitted to England at a favourable exchange rate of 2s. to a rupee when the current rate was only about 1s. 6d. Besides, European

officers and their wives were to receive four return passages to England and one single passage for each child during the period of their service. The family of an officer who died in the Services was to be repatriated at Government expense. Attendance by medical officers of their own race was made available to members of the Services, at some cost to the state. The pensions of members of the Indian Civil Service who had attained to the rank of members of Executive Councils and Governors of provinces were substantially enhanced. The management of the Family Fund for Civil Servants was to be unimproved. The additional financial burden that was involved in giving effect to these recommendations was in the neighbourhood of one and a quarter crores of rupees per year and this money had to be paid by the Indian taxpayer.

Concessions to Indian public opinion were made by the transference to the Ministers of control over future recruits in the Transferred part of the administration and by provision for a larger degree of Indianization in the Services. The proportion of fifty per cent of the cadre in the Indian Civil Service was to be reached in a period of fifteen years. The report also recommended that the statutory Public Services Commission contemplated by the Government of India Act of 1919 should be established without delay. It should consist of five whole-time members and should be non-political in character. Its functions should fall into two categories, first that of recruitment, and secondly that of a quasi-judicial character with reference to the disciplinary control and protection of the Services.

Both the majority and minority reports of the Mudduman Committee referred to the position of the Services under the actual working of the Montford Reforms. The majority came to the conclusion that the Services had loyally co-operated with the Ministers and carried out their orders. The minority quoted an extract from the dispatch of the Government of the United Provinces in which it described the spirit and outlook of the Services as having been completely changed after the Reforms. The constant criticism to which they were subjected created a feeling of uncertainty and insecurity and reduced their keenness and their former personal interest in the administration when they had shaped its policy. In the opinion of the minority, however, it was an inevitable consequence of the transfer of power to the legislature that the Services should be deprived of their privilege of shaping policy.

The fact that the control of the Superior Services and of their recruitment did not rest with the local Government or the Government of India was an anomaly which was bound to give rise to friction and mutual distrust. The natural difference between the point of view of the popular Ministers and that

of bureaucratic members of the public services, and the consciousness of the Minister that his subordinate could look to a higher power for the enforcement of his views were, the minority thought, factors which vitiated the harmony of working. It was their clear opinion that the system of recruitment and control of the Services was incompatible with the situation created by the Reforms and would check its further development. In a responsible government there could be only one authority which should control the Services, namely the legislature of the land.

§3 THE SERVICES UNDER SELF-GOVERNMENT, 1935

After the political awakening of India and the growth of self-consciousness among its people, the question of the Services began to be viewed and discussed from a new point of view. It was asserted as a self-evident proposition that all the Indian Services, high and low, ought to be manned and controlled by Indians, just as they are all paid out of the Indian revenues. No proof was necessary for the axiomatic truth that those who are supposed to serve a country must be entirely under the command, guidance and authority of its people. The I C S did not conform to this simple and natural position. Critics often said that its designation was a complete misnomer, because it was neither Indian nor civil nor a service. It was, in fact, a powerful hierarchy in which were concentrated the agents of the British masters of India. The same was true of the other superior or imperial Services.

With the announcement of Parliament's decision to grant the right of self-government to the Indian people the controversy about the status of the Services became more acute and began to wear an altogether different aspect. The matter was discussed at length in the Montford Report and later on in the Report of the Joint Parliamentary Committee which considered the Government of India Act of 1935 in Bill form. The transition from a purely bureaucratic to a partly democratic stage in India's political development was bound to produce its own results, which followed as a natural corollary of certain fundamental assumptions.

The civil services in a system of responsible government cannot claim to be the ultimate seat of all governmental authority. They have to bow to the wishes of the legislature and carry out its mandates with scrupulous loyalty. The enunciation of ideals and the shaping of policy is left entirely to Ministers who are the recognized leaders of public opinion. The Services have to act in the capacity of skilled consultants, technical advisers, or inspecting or reporting officers. Their opinions, based as they

would be on long experience, would be entitled to great respect. But the Services should not be in a position to say the final word

The new policy introduced by the Act of 1919 and taken a little further by the Act of 1935 created a feeling of profound distrust and anxiety in the minds of the civil servants. It was, of course, never suggested that they should be discharged from employment or that their interests should be adversely affected in any way. On the contrary, the indispensable and precious nature of the services they render was frequently emphasized. Still, these officers realized that their old bureaucratic independence and supremacy were doomed under the new order. They would have to be answerable for their actions to the Indian legislatures in proportion to the grant of political power to the Indian people. This prospect of subordination was unwelcome to the British civil servant. He even became apprehensive as to the stability of his position.

However, it must be remembered that Parliament did not propose to confer upon India the full status of a dominion at once. The process is to be gradual and the advance is to be made in instalments. The transfer of political power into the hands of Indians contemplated by the Act of 1935 is only partial. It is necessarily accompanied by numerous limitations and restraints. A fully self-governing India cannot at the same time be governed by an agency of foreign masters. But Parliament is not prepared to abandon all its authority in respect of that portion of the Indian administrative structure on which the maintenance of its own active control depends.

The basic philosophy of the whole arrangement is thus embodied in a combination of two inherently incompatible principles of government. The absolute rule of an irresponsible bureaucracy is to be discontinued, at least in what are intended to be autonomous provinces. Yet some of the most vital services of the state are to be kept beyond the jurisdiction of popular Ministers and legislatures. Such a defective hypothesis inevitably leads to the formation of that incongruous product which is known as responsibility with reservations, or self-government with safeguards. The essential contradiction of such a hybrid concept is obvious. It threatens to caricature democracy.

A part of the Act of 1935—Part X—containing no less than 46 sections is devoted to elaborating the privileges that are guaranteed to the Services under the new constitution. The Secretary of State retains the power of making appointments to the I.C.S., I.M.S. (Civil) and the Indian Police Service. He can also make appointments to any other Service if he thinks

it necessary to do so. Rules prescribing the scales of pay, leave, pensions, medical attendance, etc., have to be made by him. The promotion of an officer, or any order suspending him from office, or punishing or formally censuring him or adversely affecting his emoluments in respect of pension, is to be made by the Governor-General or the Governor in his individual judgement. A person who feels aggrieved by an order affecting his conditions of service may also complain to those authorities and seek redress. The appeal may be taken further to the Secretary of State. The salary and allowances of persons appointed by the Secretary of State are non-votable and are charged to the revenues of the Federation or the province as the case may be. The liberal concessions granted to the European members of the superior Services in pursuance of the recommendations of the Lee Commission are to be continued.

Appointments to the other Civil Services are made by the authorities in India and their conditions of service are also prescribed by them. In the case of the Federation, it is the Governor-General or such person as he may direct; in the case of the province, it is the Governor, or such person as he may direct. No servant can be dismissed from office by an authority subordinate to that by which he is appointed. The existing rights of persons who were already in service before the commencement of the Act of 1935 are not to be adversely affected except by a competent authority. They will also have the right of appeal against orders which punish or censure them. Subject to all these restrictions, the appropriate legislatures in India will have power to regulate, by Acts, conditions of the Civil Service, within their spheres.

Control over the defence services rests entirely in His Majesty-in-Council and the Secretary of State.

The Lee Commission had recommended that Indianization should proceed in such a way that by 1939 the Indian Civil Service should be composed of fifty per cent Indians and fifty per cent Europeans. The fact that the I.C.S. examination began to be held in India from 1921 did not mean that Indians were precluded from competing at the examination held in London. In fact, a fairly large number of Indians entered the Service by the London door. Recently it began to appear that the number of European recruits tended to fall below the fifty-fifty ratio, and it was therefore decided that the Secretary of State should appoint to the I.C.S. a certain number of graduates of British Universities by nomination instead of by competitive examination. Further, even though the right of Indian students to appear at the London test was not taken away, it was severely curtailed by a new rule that all candidates who desired to appear at that test must have previously

secured an Honours degree of a British University. Indian opinion is opposed to these changes.

The Act provides that there shall be a Public Service Commission for the Federation and a similar commission for each province. Two or more provinces may agree to have a common body as has been done by Bombay and Sind. The chairmen and members of these commissions are to be appointed by the Governor-General or the Governor as the case may be, in his discretion, and he has also to determine the number of members, their tenure of office and conditions of service. At least one-half of the members of a commission must be persons who have held office for at least ten years under the Crown in India. The expenses of the commissions including salaries, allowances and pensions to their staff will be non-votable by the legislatures.

It will be the duty of the Public Service Commissions to hold examinations for appointments to the Civil Services. They are to be consulted, subject to certain exceptions, on matters relating to the methods of recruitment, on the principles in making promotions and transfers from one service to another, on all disciplinary matters affecting a servant, and so on. However, it is not necessary to consult the commissions about the manner in which appointments and posts are to be allocated as between the various communities.

The object of creating a body like the Public Service Commission is to ensure proper recruitment for the country's executive and the efficiency of its working. Public administration cannot be allowed to be demoralized by unscrupulous political interference. A reasonable amount of independence has to be guaranteed to officers in the performance of their legitimate duties. However, in the peculiar conditions of India, the Public Service Commissions may not be able to achieve these results. Their constitution is faulty. There are numerous statutory encroachments on what ought to be their exclusive jurisdiction. The general nature of their working may turn out to be highly bureaucratic and their outlook may not harmonize with the general trend of public opinion in the country. Ministers may find them to be handicaps which thwart rather than assets which strengthen the progressive working of the state machine. Even an independent commission of this type must imbibe the general atmosphere which pervades a nation. If they live in a democracy but are also impervious to its ideology and beyond its control, the existence and functioning of such bodies may not prove to be an unmixed blessing.

54 CRITICISM

Indian public opinion has approached the question of the Services with peculiar caution. To the Indian, officers of the

bureaucracy like Collectors and Commissioners are the embodiment of the sovereignty of the raj. Till recently, all the superior grades of the governing bureaucracy were almost entirely manned by Europeans who were foreigners to the land. The deliberate exclusion of Indians, in spite of Acts of Parliament and the Queen's Proclamation of 1858, was felt by them as derogatory to their self-respect and patriotic sentiment. It was to them a constant and standing reminder of the degree of degradation to which they had been reduced by circumstances.

The ostracism that was imposed upon the citizens of the country was in itself sufficiently humiliating; the injury was aggravated by the extravagant scale on which remuneration was paid to the foreign servants from the revenue of a poor country. The Governor-General of India stood and still stands unique and unequalled in the hierarchy of officials of the whole world in point of his salary and sumptuary allowances. Even the President of the wealthiest democracy in the world, the United States of America, and the Prime Minister of the mightiest empire in history, the British Empire, are paid less than he. Members of the Indian Civil Service also still stand unique in comparison with their brethren in other countries. The monetary drain that results from this top-heavy agency is immense. With the retiring of officials from the country at the end of a long period of service, the whole volume of administrative experience acquired by them also leaves the shores of the country.

But the evil is not only financial. It is moral. As the late Mr G. K. Gokhale, the eminent Indian politician, pointed out, under the atmosphere of foreign domination, a kind of dwarfing or stunting of the Indian race has been going on. The upward impulse, the healthy ambition to rise to the loftiest heights, which is cherished in an atmosphere of democratic freedom, is being dried up by continued existence in an environment of abject inferiority. The administrative and military talents which have been the glory of the country's history in the past are bound to deteriorate and finally disappear owing to sheer disuse. This is inevitable in the absence of proper opportunities for their complete or even partial exercise.

The admiration showered upon the marvellous efficiency and machine-like systematic working of a bureaucratic government might be relished by the conqueror's instinct of self-preservation and self-exaltation. It might even find an echo in those amongst the conquered community who can be abstract and objective appreciators of organized efficiency. Yet achievement in this direction is not the only criterion of the success of a hierarchy of officials.

Lord Morley was led to imagine that 'our administration Lord Morley's would be a great deal more popular if it were a *opinion* trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious, but rather mechanical, rather lifeless, perhaps rather soulless.' No administration can be progressive or beneficent which crushes the self-reliance of a people and gives no latitude for the realization of their natural aspirations.

Fifty years ago, a responsible statesman like Lord Salisbury could ask 'Is there any man who would have the hardihood to tell me that it is within the range of possibility that a man in India should be appointed Lieutenant-Governor or Chief Commissioner or Commander-in-Chief or Viceroy without any regard whatever to his race? It is well to avoid political hypocrisy. There never was a country and there never will be one in which the government of foreigners is really popular. It will be the beginning of the end of our Empire when we forget this elementary fact and entrust greater executive powers in the hands of natives. Our Governors of provinces, our magistrates of Districts and their principal subordinates ought to be Englishmen under all circumstances.' However, sentiments like these are out of tune with present-day imperial notions, and may be taken to have been automatically discarded in the promise of the grant of self-government of a responsible type. In fact, in civil administration Indians are now holding important posts, and now a couple have even been appointed as Governors.

XLIII. EDUCATION

IN the earlier days of the Company's rule no serious attention could be paid to the education of the subjects on account of the uncertain and restless times. Their efforts were confined to the establishment of a Mohammedan or Sanskrit college of the old type Warren Hastings and Lord Cornwallis took steps in this direction In 1782 Hastings founded the first college in Bengal to encourage the study of Arabic and Persian. A similar college was established in Benares in 1791 for the cultivation of Hindu laws, literature, and religion.

New influences were, however, soon at work A knowledge of English became a means of livelihood for Indians under the rule of the English-speaking people A demand arose for facilities in English instruction in Presidency towns A struggle was going on between the old and the new schools The Orientalists wished to maintain the study of oriental classics in accordance with methods indigenous to the country. The Anglicists urged that all instruction should be given through the medium of the English language and should be in accordance with modern ideas.

Lord Macaulay was the famous supporter of the Anglicist school He recorded his opinion in a separate Minute which vigorously expressed his contempt for oriental learning His influence was irresistible. Lord William Bentinck decided that the promotion of European lore must be a main object of British rule A Resolution of the Governor-General in 1834 plainly declared for English as against oriental education Lord Auckland's Minute in 1839 finally closed the controversy Since that time, the spread of western knowledge came to be regarded as one of the duties of the state and the English language was adopted as a medium of instruction in high schools, colleges and universities

In 1854 the education of the whole people of India was accepted as a duty of the State The Board of Directors issued their famous dispatch which is described as the 'Charter of Education in India' A number of changes were proposed (i) the constitution of a separate department for the administration of education, (ii) the institution of universities in the Presidency towns, (iii) the establishment of institutions for training all classes of people, (iv) the maintenance of the existing Government Colleges and High Schools and a further increase of their number, (v) the establishment of new Middle Schools, (vi) increased attention to schools for elementary education, and (vii) the introduction of a system of grants-in-aid The mother-tongue was to be the medium of instruction

in lower branches and English in the higher. There was to be complete religious toleration. Female education was to be cordially supported and encouraged by the Government. Sir Charles Wood was mainly responsible for sending this dispatch.

Another dispatch was published in 1859. It confirmed the 1859 principles of the earlier dispatch, but pointed out that elementary education was not being properly promoted. The system of grants-in-aid was not thought desirable or expedient with reference to primary education, and it was recommended that the Government should provide for such education more directly through the instrumentality of its officers. A special cess upon land for primary education was also recommended for the consideration of the Government.

Universities were established in Bombay, Madras and Calcutta Universities in 1857, in the Punjab in 1882 and in Allahabad in 1887. They were all merely examining bodies. The growth of schools and colleges proceeded rapidly, and by 1882 there were more than two and a quarter million pupils under instruction in public bodies. The Commission of 1882 again made useful recommendations and advised increased reliance upon private effort. According to the principles of local self-government, municipalities and Local Boards were given considerable liberty in the management of primary schools. In 1898, a review of the situation was made and a searching inquiry followed. A conference of educationists was convened in Simla in 1901. A Commission to investigate and report on the working of universities was appointed in 1902. The Indian Universities Act was passed in 1904 by Lord Curzon's government to give effect to the recommendations of the Commission.

The Act specifically recognized the wider functions of the universities including instruction of students and The Act of 1904 appointment of professors and lecturers and equipment of laboratories and museums for that purpose. Territorial limits were assigned to each university. Conditions for the affiliation of colleges were prescribed. A systematic inspection of colleges by the university was established. The term of a Senator's office was prescribed to be five years instead of for life as before. The number of Senators and Syndics was limited, and a majority of nominated members was created. New regulations of the five universities were promulgated in 1905-6. They were all affiliating universities and any number of colleges could be affiliated to them. They soon ceased to be living organisms, since their constituent parts—the different colleges scattered over the province—contributed nothing to the common life of the university.

A Resolution of the Government of India in 1913 recognized the necessity of restricting the area over which affiliating universities had control. The institution of teaching and residential

universities was recommended. The strength of communal feeling and the growth of local and provincial patriotism helped in the development of the new policy. Patna, Lucknow, Rangoon, Dacca and Delhi became university centres. So did Benares and Aligarh. These are not only examining but teaching bodies and their territorial jurisdiction is strictly limited.

The Calcutta University Commission, presided over by Sir Michael Sadler, made their voluminous report in 1919. They recommended a complete reorganization of the system of higher education in Bengal. The institution of new types of bodies known as Intermediate Colleges was suggested. To them was to be transferred secondary and intermediate education. Most of the recommendations of the Commission were, however, left unheeded when, after the Montford Reforms, the Calcutta University was transferred to the Government of Bengal, and action was taken by the latter to modify the affairs of the university in 1921.

After the Montford Reforms, education became a Transferred subject, administered by Ministers responsible to the legislature. Great hopes were entertained about the acceleration of the progress of education under the new conditions. They were not fulfilled for various reasons, chiefly owing to lack of funds. Endeavours were made to combat illiteracy by providing for free and compulsory education in primary schools. The Bombay Council took the lead in this matter by passing the Compulsory Education Act, and other provinces passed similar measures. The general control of the university system was placed within the province of the local Governments. Many of them passed legislation to modify the constitution of the older institutions or to create new ones altogether. The Allahabad University was reorganized. The Madras University was also remodelled. New universities were established at Nagpur and Agia and agitation for another in Rajputana is being carried on. There are now 15 universities in British India, and 3 in Indian States.

The Bombay Government was not left entirely unaffected. A special committee was appointed to suggest measures of reform. Its Report made various recommendations about the grouping together of colleges in the city of Bombay so as to develop a university area. It recommended an alteration of the constitution of the University in order to make it more democratic and elective. Separate universities for Poona in the first instance and for Gujarat, Karnatak and Sind in course of time were also recommended. The question of the determination of the medium of instruction was left to the universities themselves. Action upon the report was then taken by the legislature.

The Bombay University Act passed in 1928 considerably altered the Constitution of the University. **Its present Constitution** Senate, which till then contained an overwhelmingly large nominated majority, has now been given a predominantly elective character. In addition to the Chancellor, the Vice-Chancellor, the Registrar and some Government officials who are *ex officio* members, the Senate consists of members elected by different constituencies. Principals of colleges and university professors elect thirteen members, college professors (including principals) elect twenty, headmasters of schools elect five. Public associations or bodies in British India like municipalities, the Indian Merchants' Chamber, the Mill-owners' Association, District Local Boards, etc., send another fifteen. Registered graduates of the University elect twenty-five. Faculties constituted by the Senate elect ten. Lastly, the Bombay Legislative Assembly sends five representatives, one of whom is the member for the University. As Sind is no longer a part of Bombay, its legislature is at present without a representative on the Senate. The total number of elected members thus reaches ninety-three. The number of those nominated by the Chancellor is limited to forty.

The executive government of the University is vested as before in the Syndicate, which now consists of the Vice-Chancellor, the Rector if any, the Director of Public Instruction, seven persons elected by the Academic Council from itself and nine persons elected by the Senate from those of its members who are not principals, professors or headmasters. The term of the Syndicate is three years and of the Senate five years.

A new body called the Academic Council has been created to regulate purely educational matters like teaching and examinations, courses of study, scholarships and prizes, etc. It consists of the Vice-Chancellor, Deans of Faculties, representatives of university professors, headmasters and Boards of Studies, in addition to five representatives of the Senate.

After the advent of provincial autonomy, educational activity has received a great impetus in all the provinces. **After provincial autonomy** Many committees have been appointed during the last two years to consider various problems and action is being taken on their reports. The provision of adequate arrangements for physical instruction, establishment of secondary education boards, a complete overhauling of courses of studies and textbooks, reorganization of the grant-in-aid scheme, introduction of free and compulsory primary education, planning a vigorous mass drive against illiteracy, closing of government high schools and colleges when their work can be found to be capable of being easily taken by private institutions, encouraging and actively helping schemes of adult education, making the mother-tongue

the medium of instruction, are matters which are seriously engaging the attention of Ministers. The Wardha scheme has suggested radical alterations in the ideals and methods of education, and experiments based on those suggestions are being carried out in many provinces

XLIV. FAMINE RELIEF AND IRRIGATION

§1. FAMINE RELIEF

In a predominantly agricultural country like India the calamity of famines is not of unusual occurrence. It is one of the important duties of the Government to prevent famines as far as possible and, when they come, to mitigate the evils which accompany them. The protection of the country from foreign invaders and the preservation of peace and order in its internal administration are factors which remove the artificial causes of famines. The most frequent cause of famine is, however, the absence or shortage of rainfall, and an inadequate water supply for the growth of crops. Measures for the prevention of famine have the objective of providing large stocks of water which can irrigate fields and tracts even in the absence of rain.

No systematic attempt at regulating and organizing famine relief was made during the earlier years of the Company's rule, though disconnected and spasmodic efforts were made to relieve distress whenever famines actually occurred. After the transference of government from the Company to the Crown, the responsibility of providing proper machinery for relieving the distress caused by famines fell upon the Government of India. The great Orissa famine occurred in 1866, when the principles and methods of relief were still unsettled and unformed. Therefore a Commission under the presidentship of Sir George Campbell conducted an inquiry and made suggestions for the adoption of a humane policy. When the rains failed in 1868 and 1869 in Rajputana, the North-Western Provinces and the Punjab, unprecedented action was taken by the Government to relieve distress, and a large expenditure was incurred. A similar course was taken in 1873 when the province of Bihar was affected. But reaction immediately set in. In 1876-8 really great famines burst upon Madras, Bombay, the North-Western Provinces, Oudh and the Punjab. Relief proved inadequate and mortality was great. A second Famine Commission, under the presidentship of General Strachey, was appointed to investigate and make a report.

This Commission published its report in 1880. It formulated general principles for the proper treatment of famines and also suggested particular measures of a preventive or protective character. The obligation imposed upon the state of offering means of relief to those in distress was recognized, though it was not to be administered so as to discourage thrift and self-reliance among the people. The Famine Code was framed accordingly. It was put to a crucial test in the famine of 1896-7. Another Commission was appointed

in 1898 which fully vindicated the wisdom of the policy of the earlier Commission. A severe drought again occurred in 1899 and the Famine Commission of 1901 was instructed to inquire into the whole question of famine relief administration.

This Commission made detailed recommendations. The first danger in the practical working of the scheme of relief was the danger of unpreparedness. Experience had demonstrated the unexpected nature of most of the famines. It was therefore best to be always completely prepared to face them. An efficient system of intelligence, effective programmes of relief work, reserves of establishments, reserves of tools and implements were suggested as safeguards. A careful look-out was to be kept for the regular premonitory symptoms of distress. Failure in rainfall, rise in prices, contraction of private charity, contraction of credit, and increase in crime were described as the warnings of approaching calamities. When they occurred, systematic distribution of relief should begin. Test works should be opened to give employment to able-bodied people, and lists of disabled persons entitled to gratuitous relief should be prepared. Private charity should be vigorously organized. Suspension of land revenue should be granted if necessary. The recommendations of the Commission were accepted, and the present famine relief policy is shaped in accordance with them.

Before 1878 no special financial provision was made to meet the obligations imposed by periodic recurrence of famines. They were treated as extraordinary calamities, and expenditure entailed by them was also regarded as extraordinary. From 1878 an annual sum of one and a half crores of rupees was set aside for 'famine insurance'. It was to be utilized in actual distribution of relief when famines occurred. In prosperous years, when it was not directly required for relief, 'protective' works like railways and irrigation were constructed out of it. Even 'productive' works which would otherwise necessitate fresh borrowing were sometimes constructed out of this grant.

Since the Reforms of 1919, famine relief became a liability upon the Provincial Governments, which were required to maintain with the Government of India a Famine Insurance Fund by contributing from their resources a fixed sum of money every year. Bombay was required to provide about Rs. 63 lakhs, the Central Provinces Rs. 47 lakhs, the United Provinces Rs. 39 lakhs, Bihar and Orissa Rs. 11 lakhs, Madras Rs. 6 lakhs, the Punjab nearly Rs. 4 lakhs, Bengal Rs. 2 lakhs and Assam Rs. 10,000 annually. Out of the annual contribution, funds would be spent on the construction of protective irrigation works and on relief measures when necessary. The balance to the credit of the fund was regarded as invested with the Central Govern-

ment, which paid interest on it. The annual contributions might be suspended when the accumulated total of the fund was not less than six times the amount of the annual assignment.

In 1928-9 the Famine Insurance Fund was changed into the Famine Relief Fund and it was decided that all annual assignments made to this fund from revenue, as well as its balances, till they exceed a certain amount, should be spent only on the relief of famine. When the balance exceeded a certain minimum money could be borrowed from it for financing the Provincial Account. The Famine Relief Fund amounted to a little less than three crores of rupees in 1937 after deducting the necessary withdrawals.

On the introduction of provincial autonomy in 1937, famine relief was left entirely to the Provincial Government. The Famine Relief Fund was discontinued and the balances due to the provinces were returned to them. The provincial Ministers and legislatures are now required to devise proper arrangements for avoiding and alleviating the misery caused by famines.

Measures for the relief of famines are different from measures to prevent them. The extension of the system of railways and the introduction of cheap and rapid means of communication make it possible to equalize the abundance in one part of the country with the scarcity in another part. The movement of foodstuffs and migration of people become easy under these conditions. The construction of irrigation schemes which provide water independent of rainfall is another effective measure of prevention. The sinking of wells, building of tanks and canals, and accumulation of rain-water in artificial reservoirs are some of the forms of irrigation works. In a large part of the country extensive projects of this type have already been carried out, and to that extent the horrors of famine have been reduced. The extension of railways and irrigation works are the chief remedies against the dangers of famine.

Improved agriculture is a further remedy. Special measures have been taken to constitute separate Agricultural Departments. Colleges for imparting education in agriculture have also been established, as for example in Poona. Experimental farms are maintained to demonstrate the efficacy of improved methods. Endeavours are made to improve the quality and the quantity of the yield of the soil and to make agriculture more prosperous and paying.

The establishment of separate departments for industries is another step in the same direction. The creation of new industries offers a variety of alternative occupations, and the burden of population dependent upon the land is diminished. The destruction of Indian industries has had the effect of leaving the Indian labourer with only one kind

of occupation, agriculture. The establishment of different industries adds to the national income and increases the staying power of the people. They are in a stronger position to face the disastrous consequences of famine. And through the diversification of employment the monotony of life is diminished.

All measures taken to relieve agricultural indebtedness in the long run reduce the acuteness of the misery of famine. They make agriculturists better equipped to resist the evil when it occurs. Advances like takkavi loans enable them to purchase seeds or implements or cattle, or to sink wells. Acts like the Deccan Agriculturists Relief Act or the Gujarat Talukdars Act are specially passed to help them in their sad plight of bondage to the money-lender. Co-operative credit societies are formed for the same purpose. The cumulative result of such steps is that the farmer is happier, more energetic, and better able to resist misfortune.

§2 IRRIGATION

Irrigation works are of immense value in an agricultural country like India. The characteristics of Indian rainfall have been described to be 'its unequal distribution over the country, its irregular distribution throughout the seasons and its liability to failure or serious deficiency'. The frequency of famines and scarcity is a constant menace to the peaceful life of the country. Irrigation works have been known in India from ancient days. The construction of canals and tanks is recorded as having been undertaken by the Hindu Rajas in early times and by the Mohammedan monarchs after the establishment of their rule in India. After the advent of the British Government, the construction of irrigation works was begun in north and south India about 1836-7. These works proved to be eminently successful. Attempts were then made to promote irrigation through the agency of private companies, but they proved financially unsound and were therefore given up.

The continuous occurrence of famines during the last decade of the nineteenth century demonstrated the inestimable utility of irrigation works. The need for their expansion was felt increasingly. The whole question was therefore referred to an Irrigation Commission which was appointed in 1901 and made its report two years later. The Commission came to the conclusion that in those parts which were subject to the calamity of famines and droughts—the Deccan, Madras and the Central Provinces—there was no prospect of irrigation works proving financially remunerative. However, such works, if constructed, were bound to mitigate the intensity of famines. The report sketched a rough programme of works, recommending an expenditure of nearly £80,000,000.

during the following twenty years and it became the basis of the irrigation policy of the Government of India.

Irrigation works in India are divided into different classes.

Classification of irrigation works There may be non-storage works, perennial canals, inundation canals, or storage works. There is also another classification based on the financial aspect

Some works are described as productive, others as protective, and still others as minor irrigation works. Productive works are big undertakings which are expected to yield an amount of income sufficient to cover the expenses of maintenance and the payment of interest on capital spent on them. Only such works can be financed from loans. Protective works are constructed with a view to guard against the necessity of periodical expenditure to relieve distress in tracts where rainfall is precarious. They are financed from current revenues, generally from the annual grant for famine relief. There is no expectation of direct financial return from such works. Minor works include very small works, and are not very important.

Irrigation has made tremendous progress in different parts of India during the last fifty years. The capital investment on productive and protective works now comes to about Rs 150 crores. Over 30 million acres are stated to be receiving water from Government irrigation works and the total length of main and branch line canals with their distributaries amounts to about 75,000 miles. After the Act of 1919 irrigation became a provincial subject and since 1922 many big constructions, involving a capital outlay of over Rs 50 crores, have been completed. The most prominent of these are the Sutlej Valley Project in the Punjab, Sarda-Oudh canals in the U P, the Sukkur Barrage in Sind, the Bhandardaia and Bhatgar dams in the Bombay Deccan and the Cauveri Reservoir and Mettur Project in Madras. Under provincial autonomy the subject of irrigation is entirely in the hands of the Ministers and the legislatures of the provinces, but when a conflict of interest and dispute arises between two or more provinces, the federal authority has to intervene.

PART VII

ENACTMENTS AND STATUTES

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The account given in the following pages is based upon Sir Courtenay Ilbert's *The Government of India A Brief Historical Survey of Parliamentary Legislation Relating to India* (Clarendon Press, 1922)

XLV. FROM 1600 TO 1858

§1. THE CHARTER OF ELIZABETH, 1600

I Circumstances leading to the grant of the Charter.

The closing of Constantinople by the Sultan of Turkey and the consequent attempts to open up new trade routes to eastern countries ended in the discovery of the Cape of Good Hope. The nation which led in the development of Indian trade was Portugal. To that nation was awarded India when, by the famous Bull of May 1493, Pope Alexander divided the whole of the undiscovered Christian world between Spain and Portugal. Holland soon entered the arena as a rival of Spain and sent out two big organized expeditions to Java by the Cape in 1595 and 1598. English merchants did not like to see all the eastern trade pass into the hands of foreigners. They held a meeting at Founder's Hall, London, under the presidentship of the Lord Mayor in September 1599, and resolved to form an association for the purpose of establishing direct trade with India. The Charter was granted fifteen months later, in 1600.

II The constitution of the Company as prescribed by the Charter of 1600

(i) The total number of members who were incorporated in the Company was 217.

(ii) Further admissions to membership depended upon the candidate's being either a son, twenty-one years of age, of an original member, or being an apprentice or a servant or a factor of the Company, or simply being elected to membership by the general body of the Court. Members would naturally be persons who would offer suitable contributions to the capital of the Company.

(iii) A Governor was to be elected annually by the members. He was to be the chief executive official of the Company.

(iv) Twenty-four committees, each consisting of an individual, were to be annually elected by the members, and the Company's work was to be distributed among them, for instance there were separate committees for looking after voyages, provision of shipping and merchandise, sale of merchandise returned, and so on. The assembly of the committees was called the 'Court of Committees' to distinguish it from the 'General Court' or the general body of members. The twenty-four committees later on came to be designated the Board of Directors.

III. Legislative powers of the Company.

(i) The Company might assemble themselves in any convenient place 'within our dominions or elsewhere' and there 'hold court' and 'make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them shall seem necessary for the good government of the Company

and of all factors, masters, marines and other officials and for the advancement of traffic and trade'.

(ii) They might impose pains, penalties and punishments to ensure the observation of these ordinances.

(iii) Their laws and punishments were to be reasonable and not contrary or repugnant to the statutes of England.

This power was similar to the power of making by-laws exercised in modern days by an ordinary municipal or commercial corporation. The laws were mainly regulations for the guidance of the Company's servants and officers. Historically, they are the germs out of which the Anglo-Indian codes have developed. No copy of the earlier regulations is known to exist.

IV *The privileges of the Company*

(i) The chief privilege was the exclusive right of trading between the Cape of Good Hope and the Straits of Magellan. The monopoly was to continue for fifteen years.

(ii) The only restriction on the privilege was that the Company were not to trade in any country belonging to a Christian Prince or State which was in alliance with England, without the permission of the said Prince or State.

(iii) A command was issued to subjects that violation of this privilege of the Company was liable to punishment.

(iv) The Company were allowed to grant trading licences to others.

Such monopolies were in accord with the ideas of the times and were justified by circumstances. Modern conditions of trade did not exist then. There was no universally acknowledged international law. Competition in trade meant war. 'For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. The independent trader was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen'. It was only later that the monopoly became unbearable, when it had outlived the conditions which made it necessary.

V *The nature of the commercial working of the Company*

(i) There is no reference to the capital of the Company in the original Charter.

(ii) There is no mention of qualification to regulate the voting power of the members. There appears to have existed equal voting power for all members irrespective of the amounts of their contributions. Any member appears to have been eligible to be elected to the committees.

(iii) There was no joint stock. The Company came under the class of Regulated Companies. Members were subject to certain common restrictions and had some common privileges, but each one traded on his own capital and for every separate

voyage. After 1612 all contributions were thrown into a joint stock and the Company became a joint-stock company.

§2. THE REGULATING ACT, 1773

I. *Clauses which made changes in the constitution of the Company.*

(i) The qualification for a vote in the Court of Proprietors was raised from £500 to £1,000.

(ii) The Directors, instead of being annually elected as before, were to hold office for four years, a quarter of the number being annually re-elected.

II. *Clauses relating to the Government of Bengal*

(i) For the Government of Bengal, a Governor-General and four Councillors were appointed. In them was vested the whole civil and military government of the Presidency. The old system of government by a President and Council or by Select Committees, introduced by Clive, was abolished. The first Governor-General and the four Councillors were named in the Act. Later on the patronage was to be vested in the Company.

(ii) Their tenure of office was to be five years and they were not to be removable during the period except by the King on the representation of the Directors. This temporary enactment is believed to be the origin of the custom which limits the tenure of important offices in India like those of Governor-General, Governors or Executive Councillors to five years.

(iii) The Governor-General and Council were bound by the votes of the majority of those present at their meetings. In the case of an equal division the Governor-General was to have the casting vote.

In so far as a regular executive machinery was provided for the Presidency of Bengal by these clauses of the Act, there was an improvement over the earlier situation. However, in practical working, the system proved disastrous. Out of the four Councillors who were nominated by the Act, three were antagonistic to the Governor-General and opposed him in all important measures. As they formed a majority and as the decision of the majority was, by law, binding on all, the Governor-General was subjected to the mortification of being compelled to carry out the mandates of his opponents. Very often, the responsible head of the administration was required to do things which he did not approve of. His casting vote could not be given unless there was a tie. Such occasions were rare as long as the Council, together with Governor-General, consisted of five members. Francis, who was a member of the Council, was a sworn enemy of Warren Hastings and harassed him by constant and merciless opposition. These unseemly dissensions in the executive Government were demoralizing. They detracted from the efficiency of management and caused widespread embarrassment and confusion. The Governor-General was placed in a most awkward

position and bitter recrimination and bickering were a feature of the mutual relations of the Company's chief officials in Bengal.

III. *The supremacy of the Bengal Presidency over the other presidencies* was definitely declared. The Governor-General and Council were given power to superintend and control the government and management of the Presidencies of Madras, Bombay and Bencoolen (in Sumatra).

This was a wise step. It secured a unity of control and a uniformity of policy throughout the growing territorial possessions of the East India Company in India. The administration of the different presidencies and factories needed co-ordination, and the sense of their being parts of a coherent whole had to be developed. The creation in India of a commanding and superior authority was therefore a step in the right direction. However, the provisions of the Act in this respect were not clear. The Governors of the Presidencies of Madras and Bombay continued to defy the newly-created supreme authority and to undertake military ventures on their own initiative. The war with the Marathas and the war with Hyder Ali were the results of the actions of the Governments in the presidencies. They involved the Governor-General in financial embarrassment and complicated political responsibility. It was therefore necessary to strengthen the inadequate clause which declared the supremacy of the Governor-General.

IV. *The Governor-General and Council* were to obey the orders of the Court of Directors and keep them constantly informed of all matters relating to the interest of the Company. The Indian official's subordination to the authorities in England was thus clearly established.

V. *The Directors* were to keep the Treasury informed, within fourteen days of their receipt of Indian dispatches, of the civil, military and revenue affairs of the government of the Company.

The control of the British Parliament and its right to be acquainted with the affairs of a private corporation were here clearly demonstrated.

VI. *A Supreme Court of Judicature* was established in Bengal. It was empowered to exercise civil, criminal, admiralty and ecclesiastical jurisdiction and to establish rules of procedure. Its authority extended to all British subjects residing in Bengal, Bihar, and Orissa under the protection of the Company. It consisted of a Chief Justice and three other Judges.

But, (i) the Governor-General and the Councillors were exempted from its jurisdiction, (ii) when natives of the country were concerned, suits and actions could be heard by it where the defendant native had agreed to go to the Supreme Court; (iii) appeals against this Court could be made to the King-in-Council.

In many respects the Act was both defective and obscure.

(i) Which of the two authorities, the Council or the Court, was paramount? How far could the judiciary control executive officials without sapping civil authority? (ii) What law was the Court to administer? 'Apparently it was the unregenerate English law, insular, technical, formless, tempered in its application to English circumstances by the quibbles of judges and the obstinacy of juries, capable of being an instrument of the most monstrous injustice when administered in an atmosphere different from that in which it had grown up.' Neither Hindu nor Mohammedan nor any other indigenous law was applicable by the Court (iii) What persons came under the jurisdiction of the Court? It was difficult to define the persons who came under the class of British subjects. Sir Courtenay Ilbert thinks that probably it included only European British subjects and not native inhabitants of India residing in the three provinces. It was also difficult to define what exactly constituted employment in the service of the Company. Could a native landowner farming revenues be described as a servant? There was no authority to give rulings in such doubtful cases.

The Court claimed to have jurisdiction over the whole native population. The quarrel on this point culminated in the famous Cossijurah case. The Sheriff and his officers, who were attempting to execute a writ issued by the Court against a zamindar, were driven off by sepoys acting under the orders of the Council. The action of the Council was not disapproved of by the Directors, and practically the Court was defeated on the point. The Court also claimed the right to try English and Indian officers of the Company for acts done by them in their official capacity. On this point it was successful, against the wishes of the Council to the contrary. The Supreme Court further declared that it was competent to try actions against the judicial officers of the Company for acts done in the execution of their judicial duties. In the famous Patna case, the Supreme Court gave judgement in favour of an Indian plaintiff against officers of the Patna Provincial Council, acting in their judicial capacity. Hastings tried to remove the friction between the Supreme Court and the country courts by appointing Impey as judge of the court of the Sadr Diwani Adalat.

The original object of establishing an independent Supreme Court for the administration of justice was not realized in practice. The Court did not prove to be a protection against the despotic actions of the executive, on the contrary, it became itself an instrument of terrorism. Its creators did not realize the dangerous consequences of the ambiguous character of its jurisdiction and the indefinite understanding of its relations with the executive.

A borderland warfare was constantly going on between the

two authorities. Nor did the application of English law improve matters to any extent. In the first instance, it was absolutely unknown to the Indian people and was out of accord with their traditions, customs and history. Further, the English law, which the Supreme Court was administering, was itself an impure and clumsy mass which could not stand the test either of common-sense or of ethics. The Amending Act of 1781 settled some of the disputed questions and made the administration of justice more systematic and less confused.

VII. *The Governor-General-in-Council* was given power to issue rules, ordinances, and regulations for the government of the Company's dominions. This is the beginning of the law-making power of the Government of India. The regulations were to be registered and published in the Supreme Court.

VIII. *Liberal salaries* were provided for the Governor-General, Councillors and judges.

IX. *All servants*, high and low, were prevented from taking bribes and presents.

X. *No private trade* was to be undertaken by the Company's servants.

The last two clauses were intended to purify the administration, which had grown extremely corrupt and extravagant.

§3 PITT'S INDIA ACT, 1784

I. (i) A Board of six Commissioners for the affairs of India, popularly known as the Board of Control, was established. It consisted of the Chancellor of the Exchequer, one of the Secretaries of State and four other Privy Councillors appointed by the Crown and holding office during its pleasure.

(ii) The Commissioners were unpaid and had no patronage.

(iii) They were empowered 'to superintend, direct and control all acts, operations and concerns which relate to the civil or military government or revenues of the territorial possessions of the East India Company'. They were to have access to all papers and instruments of the Company and could demand copies of all minutes, orders and dispatches sent or received by the Directors.

(iv) The Directors had to pay obedience to and to be bound by the orders of the Board. The latter might disapprove of or modify any of the dispatches.

II. A Committee of Secrecy of not more than three members was to be formed out of the Directors. Secret orders to India were to be transmitted by this body.

III. The Court of Proprietors lost its chief governing faculty. It could no longer revoke or modify the proceedings of the Court of Directors.

IV. The Governor-General's Council was reduced from four to three members including the Commander-in-Chief.

V. The Presidencies of Madras and Bombay were to have a Governor and three Councillors including the Commander-in-Chief.

VI. The Governor-General, Governors of Presidencies, Commander-in-Chief and Members of Councils were to be appointed by the Court of Directors. They and any other officers could be removed from office either by the Crown or by the Directors.

VII. The control of the Governor-General and his Council over the Governments of the other presidencies was enlarged and extended to all transactions about war or peace or expenditure of revenues.

VIII. The Governor-General-in-Council was not to enter into war or peace or treaty without the express authority of the Directors or the Committee of Secrecy.

IX. All British subjects were declared amenable to all courts of competent jurisdiction in India or England, for acts done in Native States.

X. A special Court consisting of three judges, four Peers and six members of the House of Commons was constituted for the trial in England of offences committed in India.

XI. Every practicable retrenchment and reduction in expenditure on civil and military establishments in India was to be made.

This measure was based on the principle of placing the Company in direct and permanent subordination to a body representing the Parliament of Britain. The Board of Directors retained their patronage and their power of revision, but they were subjected to the control of representatives of the British Government. This system has been described as Double Government by constitutional writers, because the Board of Directors represented a shareholders' corporation whose activities were primarily responsible for the acquisition of a considerable empire, and the Board of Control symbolized the sovereignty of the British state which had to exercise beneficent supervision.

§4 THE CHARTER ACT OF 1833

I. The Company's revenues and territories were to be held for a further period of twenty years but 'in trust for His Majesty and his heirs'.

II. The monopoly of the China trade and of the tea trade was taken away.

III. The Company were required to close their commercial business and wind up their affairs as quickly as possible. Their territorial and other debts were charged to the revenues of India.

IV. The Company retained their administrative and political powers and rights of patronage over Indian appointments.

V. The Governor-General-in-Council of Bengal was named Governor-General-in-Council of India. He was to be responsible for the government of the whole of India.

VI. A fourth ordinary member was to be appointed to the Council for legislative purposes. He was not to be chosen from among the Company's servants. (The first legal member was Lord Macaulay.)

VII. The overgrown Presidency of Bengal was to be divided into two distinct presidencies. (But the provision never came into operation.)

VIII. Changes were made in the legislative powers of the Government. At this time there were five different bodies of law in operation in India: (i) the statute law introduced by the Charter of George I, (ii) all subsequent English Acts which were expressly extended to any part of India, (iii) regulations of the Governor-General-in-Council, (iv) regulations of the Madras Council, (v) regulations of the Bombay Code.

Three leading defects in the existing legal system were pointed out to Parliament: (i) the nature of the laws and regulations, (ii) the ill-defined authority from which they emanated, (iii) the anomalous and conflicting judicatures by which the laws were administered.

The Act of 1833 introduced the following changes: (i) The legislative power of the Indian Government was exclusively vested in the Governor-General-in-Council, the Provincial Governments being deprived of their law-making power; (ii) The Governor-General-in-Council was empowered to make laws and regulations, (a) for repealing or altering any existing measure, (b) for all persons and all courts of justice, (c) for all places and things and for all servants of the Company, and (d) for Indian officers and soldiers in the military service of the Company and for the administration of courts-martial over them.

The restrictions put on this power were that: (i) the Act of 1833 was not to be changed in any way, nor were the laws about some military matters, (ii) the prerogative and the sovereignty of the Crown and the authority of Parliament were not to be affected, (iii) the right of Parliament to legislate for India and to repeal Indian Acts was expressly maintained, (iv) laws made in India were subject to disallowance by the Court of Directors acting under the Board of Control.

IX. A comprehensive consolidation and codification of Indian laws was contemplated. The Indian Law Commission was appointed to inquire into the jurisdiction, powers, and rules of the existing Courts of Justice and the nature and operation of all laws prevailing in the country. Its labours resulted in the preparation of the Indian Penal Code and, indirectly, of the later Code of Civil and Criminal Procedure.

X. It was declared lawful for any natural subject of His

Majesty to live in any territory which was under the government of the Company, and to hold land. No licences were required for this purpose, as had previously been necessary. Indians were to be protected from any insult to their persons or religion by the European population

XI No subject because of his birth, descent, or colour was precluded from holding office

XII Slavery was abolished

It will be seen that important changes and alterations were introduced by the Act of 1833 in the constitution of the East India Company and the system of Indian administration. The times were generally times of reform. The Reform Bill had just been passed in England. Slavery had just been abolished by the reformed Parliament. As usual, when the time came for the renewal of the Company's Charter in 1833, careful inquiries were made as to the condition of India. Lord William Bentinck had just finished his period of peaceful administration, and the conquest of India had been practically completed. It is no matter for surprise, therefore, that the Act of 1833 brought about unportant modifications in the affairs of the Company.

§5 THE ACT OF 1853

I No definite term of years was fixed for the continuance of the Company

II. The number of Directors was reduced to eighteen, of whom six were to be appointed by the Crown

III The appointment of a separate Governor for Bengal was authorized. Until he was appointed, the Directors and the Board of Control might authorize the appointment of a Lieutenant-Governor of Bengal. He was appointed in 1854. (No Governor was appointed till the year 1912)

IV Power was given to the Directors either to constitute one new presidency with a Governor and Council or to authorize the appointment of a Lieutenant-Governor. (One such was appointed for the Punjab in 1859)

V The legislative member was made an ordinary member

VI The Council was enlarged for legislative purposes by the addition of the Chief Justice of Bengal, of a puisne judge, and four representative members nominated by Bengal, Madras, Bombay and the North-Western Provinces. In all, therefore, for legislative purposes, there were twelve members: the Governor-General, the Commander-in-Chief, the four ordinary members and the six additional members

VII The sittings of the Legislative Council were made public and the proceedings were officially published

VIII. English Commissioners were appointed to examine and consider the recommendations of the Indian Law Commission appointed in 1833.

IX. Patronage was taken away from the Directors. The Board of Control was empowered to frame rules and regulations for appointments. The Indian Civil Service was thrown open to general competition.

§6. THE ACT OF 1858

After the Indian Mutiny the system of Double Government received a death-blow

I. India was to be henceforth governed by and in the name of the Crown.

II A Secretary of State was appointed, to whom were transferred all the powers of the Court of Directors and the Board of Control

III He was to be assisted by a Council

(i) It consisted of fifteen members, of whom eight were appointed by the Crown and seven elected by the Directors

(ii) At least nine of the members must have served in India for ten years

(iii) Vacancies could be filled by the Crown

(iv) Its members were precluded from becoming Members of Parliament

(v) The Secretary of State was to be its President

" (vi) He had power to overrule its decisions in case of difference of opinion

(vii) The Council had to conduct the business transacted in the United Kingdom in relation to the Government of India

(viii) A permanent establishment was created for the Secretary of State-in-Council.

IV Patronage, which was important, was left to the Crown and the Secretary of State. The Lieutenant-Governors could be appointed by the Governor-General

V New rules were made for the Indian Civil Service examination, which was thrown open to all.

VI The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be controlled by the Secretary of State, and was to be charged with a dividend on the Company's stock and with their debts

VII A special auditor for the accounts of the Secretary of State was appointed

VIII The Board of Control was formally abolished.

IX The Secretary of State was given a quasi-corporate character

X All the military and naval forces of the Company were transferred to the Crown. Their separate local character was however retained.

All these changes effected by the Act of 1858 were formally announced in India by the Queen's Proclamation of 1 November 1858

XLVI. FROM 1859 TO 1942

§1. THE INDIAN COUNCILS ACT OF 1861

I. A fifth ordinary member was added to the Governor-General's Executive Council. The Commander-in-Chief could be an extraordinary member.

II Power was given to the Governor-General to appoint a President to preside over the Executive Council in his absence.

III (i) For legislation, the Council was to be reinforced by additional members, not less than six and not more than twelve, nominated by the Governor-General and holding office for two years. Of these, not less than one-half were to be non-officials.

(ii) The functions of the new body were strictly limited to legislation. The Council was expressly forbidden to transact any business like asking questions, moving resolutions, etc.

(iii) The Governor-General's assent was required to every Act passed by the Council.

(iv) The legislative power of the Governor-General-in-Council was declared to extend to all persons and things. Certain Parliamentary enactments were, however, excepted.

IV The Governor-General was given power to issue ordinances in emergencies. They could remain in force for not more than six months.

V It had been the practice to administer newly-acquired territories such as Saugor, the Narmada Territories, Assam, Pegu, and the Punjab, not under the laws and regulations in force in the old provinces of Bengal and Bihar but under instructions issued by the Governor-General-in-Council. Such provinces were known as Non-Regulation Provinces. The Act of 1861 declared that all the rules and regulations specially made by the Governor-General-in-Council for the Non-Regulation Provinces were valid.

VI The power of legislation was restored to Bombay and Madras (It had been taken away in 1833).

(i) The Councils of these provinces were expanded for legislative purposes by the addition of the Advocate-General and other nominated members, not less than four and not more than eight, at least half of whom were to be non-officials, as in the case of the Governor-General's Council.

(ii) No line of demarcation was drawn between central and local subjects.

(iii) The previous sanction of the Governor-General was made necessary in certain cases.

(iv) The assent of the Governor-General was made necessary, in addition to that of the Governor, for every Act passed by the provincial legislatures.

(v) Their procedure and functions were to be strictly legislative

VII The Governor-General was directed to establish a Legislative Council for Bengal and was empowered to establish similar bodies for the North-Western provinces and the Punjab

VIII Power was also given to constitute new provinces, to appoint Lieutenant-Governors to administer them, and to alter the boundaries of existing provinces.

§2 THE INDIAN COUNCILS ACT OF 1892

I The size of the councils was enlarged The Governor-General's Council was henceforth to contain between 10 and 16 additional members The Bombay and Madras Councils were to contain between 8 and 20, the Bengal Council not more than 20, and the United Provinces' Council 15 additional members.

II The Governor-General-in-Council was empowered to make rules regulating the conditions under which the additional members were nominated The principle of indirect election was introduced under these rules Nominations of some of the non-official members were made on the recommendations of some recognized bodies and corporations

III Discussion of the annual financial statement, and the asking of questions—but not supplementary questions—on important matters of administration were authorized But power was not given to move resolutions or to divide the Council.

IV Local legislatures were enabled, with the sanction of the Governor-General, to repeal or alter Acts of the Governor-General's Council, affecting their provinces

§3 THE INDIAN COUNCILS ACT OF 1909

I The size of the Legislative Councils was materially enlarged The maximum number of additional members for the Governor-General's Council was raised from 16 to 60, that for the Bengal, Madras and Bombay Councils from 20 to 50, and for the United Provinces from 15 to 50

II Members were to be partly elected and partly nominated The proportion of elected to nominated members was to be fixed by regulations made under the Act Nominated members could be either officials or non-officials representing certain interests or possessing special qualifications The elected members were returned by constituencies like municipalities, Local Boards, universities, Chambers of Commerce, trade associations, landholders, and tea planters

The regulations created non-official majorities in all provincial Legislative Councils and maintained an official majority in the supreme Legislative Council Of course this did not mean a majority of elected members As Mr Montagu said 'Their legislation bears the quasi-executive stamp of an official majority'

III. The legislatures' functions were enlarged. Power was given to move resolutions on the budget and on any other matter of general interest and to divide the Council upon them. The resolutions were in the form of recommendations. Power was also given to put supplementary questions. The member who originally put the question and was not satisfied with the answer could now put further questions to elicit information.

IV. The Governor-General, the Governors, and the Lieutenant-Governors were to appoint vice-presidents of their Councils to preside over the legislatures in their absence.

V. The maximum number of the ordinary members of the Executive Councils for Madras and Bombay was raised from two to four, of whom half at least must have served for twelve years in the service of the Crown in India.

VI. The Governor-General could establish by Proclamation Executive Councils for Lieutenant-Governors, subject to disallowance by either House of Parliament. Bengal was, however, given an Executive Council immediately.

Lords Minto and Morley expressly disclaimed any desire or intention on their part to advance towards parliamentary or responsible government. Lord Morley declared 'In all that I have said, I shall not be taken to indicate for a moment that I dream that you can transplant British institutions wholesale into India. Even if it could be done, it would not be for the good of India. That is a fantastic and ludicrous dream.' This Act was intended simply to associate Indians in a larger measure with the administration.

By executive direction one Indian member was appointed to the Executive Council from the time of the Morley-Minto Reforms.

§4 THE GOVERNMENT OF INDIA ACT, 1919

The 'Home' Government

I. The salary of the Secretary of State was to be paid out of moneys provided by Parliament, and the salaries of his Under-Secretaries and any other expenses in his department might be paid out of the revenues of India or out of moneys provided by Parliament.

II. The Council of India was to consist of not less than eight and not more than twelve members. The term of office of a member was five years, and his salary £1,200 per year. Persons domiciled in India at the time of their appointment received, in addition, an annual allowance of £600.

III. Provision was made for the appointment of a High Commissioner for India in the United Kingdom and for his pay, pensions, powers and duties. The officer was to transact the commercial and agency business of the Government of India,

which until then had been transacted by the Secretary of State himself. He was appointed by the Government of India and controlled and paid by them.

IV. The Secretary of State might, by rules, regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary of State in order to give effect to the purposes of the Act.

The Central Government

V. The number of members of the Governor-General's Executive Council was to be such as His Majesty thought fit to appoint.

VI. Provision was made for the distinct classification of central and provincial subjects and for the devolution of authority in respect of provincial subjects to local Governments.

VII. The Indian legislature was to consist of two bodies. The Council of State was to consist of not more than 60 members, of whom not more than 20 were to be officials and 33 were to be elected. The Legislative Assembly was to be formed of a total number of 140 members of whom 100 were to be elected. Of the nominated members, 26 were to be officials. The right of electing its own president was conceded to the Assembly. It was to be exercised after the expiration of the first four years of the working of the Act.

Provincial Governments

VIII. The provincial subjects were divided into two halves. Reserved and Transferred.

IX. The Transferred subjects were given for administration to Ministers selected by the Governor from the elected members of the Legislative Council.

X. The Ministers were made responsible to the legislatures for the administration of the Transferred departments.

XI. The Reserved subjects were to be administered by Executive Councillors who were not removable by the legislatures.

XII. The provincial legislatures were greatly enlarged and the franchise for them was largely widened. They were given the power of voting the provincial budgets and controlling the Transferred departments. The presidents of the provincial Councils were to be elected by the Councils themselves at the expiration of the first four years of the working of the Act.

General

XIII. At the end of the ten years after the passing of the Act, a Commission was to be appointed to investigate into the working of the Reforms and to recommend steps for further advance in the direction of responsible government.

§5. THE GOVERNMENT OF INDIA ACT, 1935

The 'Home' Government

I. The Council of India is abolished and in its place is created a new body called the Secretary of State's Advisers who will be not less than three and not more than six in number. Their functions will be similar to those of the India Council

The Central Government

II. Provision has been made for the present unitary government to be substituted by an all-India Federation including British India and the Indian States

(i) Three lists of subjects has been made, one for the Federal Government, one for the Provinces and the third for their concurrent jurisdiction

(ii) The federal legislature will be composed of the Council of State and the Federal Assembly. The Council will consist of not more than 260 members of whom not more than 100 will be from the Indian States, and the Assembly will consist of not more than 375 members of whom not more than 150 will be from Indian States

(iii) The federal subjects will be divided into two parts one of which will be given for management to Ministers responsible to the federal legislature and the other will be managed by Counsellors who will not be responsible. The principle of responsibility will be introduced in the central government for the first time

(iv) The Viceroy will have numerous special powers and responsibilities

Provincial Governments

III (i) The provinces have been given what is known as autonomy, that is, full freedom to manage their own sphere. Much of the Central Government's control over provincial matters has been withdrawn

(ii) The system of dyarchy has been abolished. All the provincial subjects are given for management to Ministers responsible to the provincial legislatures

(iii) The size of the legislatures is considerably enlarged and the franchise for them considerably lowered

(iv) The Governor will have numerous special powers and responsibilities

General

IV. The Federal Court of India has been established

V. The Federal Railway Authority is to be established for the management of Indian railways

§6 THE CRIPPS MISSION, 1942

Draft Declaration

His Majesty's Government, having considered the anxieties expressed in this country and in India as to the fulfilment of the promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion, associated with the United Kingdom and the other Dominions by a common allegiance to the Crown, but equal to them in every respect, in no way subordinate in any aspect of its domestic or external affairs

His Majesty's Government therefore make the following declaration

I Immediately upon the cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new Constitution for India

II Provision shall be made, as set out below, for the participation of the Indian States in the constitution-making body

III His Majesty's Government undertake to accept and implement forthwith the Constitution so framed subject only to

(1) the right of any Province of British India that is not prepared to accept the new Constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides

With such non-acceding Provinces, should they so desire. His Majesty's Government will be prepared to agree upon a new Constitution, giving them the same full status as the Indian Union, and arrived at by a procedure analogous to that here laid down

(2) the signing of a Treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This Treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands, it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restriction on the power of the Indian Union to decide in the future its relationship to the other Member States of the British Commonwealth

Whether or not an Indian State elects to adhere to the Constitution, it will be necessary to negotiate a revision of its Treaty arrangements, so far as this may be required in the new situation

IV The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal

communities agree upon some other form before the end of hostilities

Immediately upon the result being known of the provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of the Provincial Legislatures shall, as a single electoral college, proceed to the election of the constitution-making body by the system of proportion representation. This new body shall be in number about one-tenth of the number of the electorate college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of the representatives of British India as a whole, and with the same powers as the British Indian members.

V During the critical period which now faces India and until the new Constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain control and direction of the defence of India as part of their world war effort, but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India.

The above Draft Declaration was made by Sir Stafford Cripps on behalf of the British War Cabinet. Sir Stafford specially flew to India, in March 1942 to make the Declaration and to hold consultations on it with Indian leaders. Unfortunately the negotiations did not succeed and the proposals made in the Declaration were rejected by all the important political parties in the country for different reasons. One important criticism of the proposals was that they did not visualize the immediate establishment of a responsible national government at the centre with a real power to organize the country's defence.

Thereafter in accordance with the policy pursued by the Viceroy with the approval of His Majesty's Government of India, viz. his Executive Council, that Council was expanded for a second time in July 1942, the first expansion having taken place in October 1941 (see pages 102-4). The membership was enlarged from 12 to 15. Of these, 11 were non-official Indians, 1 non-official European and 3 European officials including the Commander-in-Chief whose portfolio was designated as War Portfolio. A new portfolio was created for Defence which included all questions concerning defence involving co-ordination of policy and action between the civil departments and the

work of the War member, war legislation, demobilization, manpower, National Defence Council, cantonment local self-government, land acquisition, prisoners of war, etc. The old portfolio of Communications was split up into the portfolios of War Transport, and Posts and Air (civil aviation). The former included the Railway Board, ports, railway priorities, petrol rationing and the development of producer-gas, the latter included posts and telegraphs, civil aviation, motor vehicles legislation and the Central Road Fund.

Indian representatives were also nominated on the War Cabinet and on the Pacific War Council in London.

APPENDIX

SUMMARY OF STATEMENTS, 1946-7

§1. THE CABINET MISSION, 16 MAY 1946

On 15 March the Prime Minister Mr Attlee said in the House of Commons 'My colleagues (that is the Cabinet Mission) are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of government is to replace the present regime is for India to decide, but our desire is to help her to set up forthwith the machinery for making that decision.'

We have done our utmost to assist the main political parties (that is the Congress and the Muslim League) to reach agreement upon the fundamental issue of the unity or division of India. But no agreement could be reached. We have therefore decided that immediate arrangements should be made whereby Indians may decide the future constitution of India, and an Interim Government may be set up at once to carry on the administration of British India until the new constitution can be brought into being. We have endeavoured to be just to all.

We were greatly impressed by the very genuine and acute anxiety of Muslims lest they should find themselves subjected to a perpetual Hindu-majority rule. Muslims have a very real apprehension that their culture and political and social life might become submerged in a purely unitary India in which the Hindus with their greatly superior numbers must be a dominating element. We therefore examined the case for Pakistan and found that it was not feasible for the following reasons.

Both in the north-western and north-eastern zones of Pakistan the size of non-Muslim minorities would be very considerable, in the former they would be 37.9 per cent and in the latter 48.3 per cent. In the Punjab, Muslims number over 16 millions and non-Muslims over 12 millions, in Bengal, Muslims are over 38 millions and non-Muslims over 27, in Assam, Muslims are actually in a minority, being 3 millions as against the non-Muslim population of over 6 millions. We cannot see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan can equally be used in favour of the exclusion of the non-Muslim areas from Pakistan.

A smaller sovereign Pakistan confined to the Muslim majority areas alone is regarded by the Muslim League as quite impracticable. We also feel that a radical partition of the Punjab and Bengal would be contrary to the wishes and interests of a very large proportion of the inhabitants of those provinces.

We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign State of Pakistan would provide an acceptable solution for the communal problem.

There are also administrative, economic and military considerations. To disintegrate the whole of the transportation and postal and telegraph systems and defence arrangements including the armed forces, the navy and the air force would entail the gravest dangers.

The Indian States would find greater difficulty in associating themselves with a divided British India.

The western and eastern halves of the proposed Pakistan State are separated from each other by some seven hundred miles.

With the attainment of independence by British India, whether outside or inside the British Commonwealth, the existing relationship between the Rulers of Indian States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government. The Rulers have however assured us that they are ready and willing to co-operate in the new development of India. We have not therefore dealt with the States in detail.

We recommend that the constitution of India of the future should take the following basic form:

- 1 There should be a Union of India, embracing both British India and the States, which should deal with the following subjects: Foreign Affairs, Defence, and Communications, and should have the powers necessary to raise the finances required for the above subjects.

- 2 The Union should have an executive and legislature constituted from British India and State representatives. Any question raising a major communal issue should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all members present and voting.

- 3 All other subjects and residuary powers should vest in the provinces. The States will retain all subjects not ceded by them to the Union.

- 4 Provinces should be free to form groups with executives and legislatures, and each Group could determine the provincial subjects to be taken in common.

- 5 There should be a provision whereby any province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the constitution after an initial period of ten years and at ten yearly intervals thereafter.

A constitution-making machinery should be brought into being forthwith in the following manner: (a) the recently elected Provincial Legislative Assemblies should be taken as electing bodies, (b) to each province should be allotted a total number

of seats proportional to its population, roughly in the ratio of one to a million, (c) this provincial allocation of seats should be divided between the main communities in each province in proportion to their population; (d) representatives allotted to each community in a province should be elected by members of that community in its Legislative Assembly, (e) for these purposes only three main communities should be recognized, General, Muslim and Sikhs, General including all who are not Muslims or Sikhs, the method of election should be proportional representation, the total number of representatives from British India will be 292 to which may be added one representative each from Delhi, Ajmer-Merwara and Coorg, the maximum number for Indian States will be 93

A preliminary meeting of representatives thus chosen will be held in New Delhi as soon as possible. At this meeting the general order of business will be decided, a Chairman and other officers elected and an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas set up. Thereafter the representatives will divide up into three Sections, A, B, and C.

Section A will consist of representatives from Madras, Bombay, United Provinces, Bihar, Central Provinces and Orissa—187 General and 20 Muslims, Section B will consist of representatives from the Punjab, North-West Frontier Province and Sind—9 General, 22 Muslims and 4 Sikhs, Section C will consist of representatives from Bengal and Assam—34 General and 36 Muslims.

These Sections will proceed to settle the provincial constitutions for the provinces included in each Section, they will also decide whether any Group constitution will set up for those provinces and, if so, with what provincial subjects the Group will deal.

The representatives of the Sections and the Indian States will re-assemble for the purpose of settling the Union Constitution.

In the Union Constituent Assembly, resolutions varying provisions of the basic form of the constitution as stated above, or raising any major communal issue will require a majority of the representatives present and voting of each of the two major communities. The Chairman will decide which resolutions raise major communal issues and, if so requested, should consult the Federal Court before giving his decision.

As soon as the new constitutional arrangements have come into operation, it will be open to any province to elect to come out of any Group in which it has been placed. Such a decision will be taken by the new legislature of the province after the first general election under the new constitution.

The Advisory Committee on the rights of citizens, minorities

and Tribal and excluded areas should contain due representation of the interests affected, their function will be to report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities, and a scheme for the administration of Tribal and excluded areas and to advise whether these rights should be incorporated in the Provincial, Group or Union constitutions

It will be necessary to negotiate a treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power

It is very important and essential that during the interim period there should be a Government at the Centre having popular support and co-operation of the major political parties. Immediate efforts should be made to establish such a Government

§2 THE BRITISH PRIME MINISTER'S DECLARATION, 20 FEBRUARY 1947

It has long been the policy of successive British Governments to work towards the realization of self-government in India. The Acts of 1919 and 1935 and the Cripps offer of 1942 are clear evidence of the desire to transfer power to Indians. His Majesty's Government believe this policy to have been right and in accordance with democratic principles.

The Cabinet Mission which was sent out to India in March 1946 spent over three months in consultation with Indian leaders, and when it seemed clear that without some initiative from the Mission agreement between the Congress and the Muslim League was unlikely to be reached they put forward proposals themselves on 16 May. Since the return of the Mission a representative Interim Government has been set up at the Centre and responsible Indian governments are functioning in all the provinces.

It is with great regret that His Majesty's Government find that there are still differences among Indian parties which are preventing the Constituent Assembly from functioning as it was intended that it should. It is of the essence of the plan that the Assembly should be fully representative.

His Majesty's Government desire to hand over their responsibility to authorities established by a constitution approved by all parties in India in accordance with the Cabinet Mission's plan. But unfortunately there is at present no clear prospect that such a constitution and such an authority will emerge. The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948.

His Majesty's Government are anxious to hand over their

responsibilities to a Government which, resting on the sure foundation of the support of the people, is capable of maintaining peace and administering India with justice and efficiency. His Majesty's Government had agreed to recommend to Parliament a constitution worked out in accordance with the proposals of the Cabinet Mission by a fully representative Constituent Assembly. But if it should appear that such a constitution will not have been worked out by a fully representative Assembly before June 1948, His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people.

As the process of the transfer of power proceeds, it will become progressively more difficult to carry out to the letter all the provisions of the Act of 1935. Legislation will be introduced in due course to give effect to the final transfer of power.

In regard to the Indian States, as was explicitly stated by the Cabinet Mission, His Majesty's Government do not intend to hand over their powers and obligations under Paramountcy to any Government of British India.

His Majesty's Government will negotiate agreements in regard to matters arising out of the transfer with representatives of those to whom they propose to transfer power. They also feel that British commercial and industrial interests in India can look forward to a fair field for their enterprise under the new conditions.

The appointment of Lord Wavell as Viceroy will be terminated and he will be succeeded by Lord Mountbatten. The new Viceroy will be entrusted with the task of transferring to Indian hands responsibility for the government of British India in a manner that will ensure the future happiness and prosperity of India.

§3 DECLARATION BY HIS MAJESTY'S GOVERNMENT, 3 JUNE 1947

Even after the announcement of 20 February 1947, the major Indian political parties have not agreed to co-operate in working the Cabinet Mission plan of 16 May 1946. A Constituent Assembly as envisaged by the plan has been formed and begun functioning but the Muslim League party has decided not to participate in it. In the absence of an agreement the task of devising a method by which the wishes of the Indian people can be ascertained has devolved on His Majesty's Government. They have however no intention of attempting to frame any ultimate constitution for India, this is a matter for Indians.

themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

It is not intended to interrupt the work of the existing Constituent Assembly. But it is also clear that any constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. The following procedure is therefore laid down for ascertaining the wishes of the people of such areas whether their constitution is to be framed (a) in the existing Constituent Assembly or (b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly. It will then be possible to determine the authority or authorities to whom power should be transferred.

The provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will each be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the province, in accordance with the census figures of 1941.

The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements will be made accordingly.

Before the question as to the partition is decided, it is desirable that the representatives of each part should know in advance which Constituent Assembly the province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the province as a whole would join if it were decided by the two parts to remain united.

In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf of the areas they represent, decide which of the alternatives mentioned above to adopt.

For the immediate purpose of deciding on the issue of partition, the members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim majority districts and non-Muslim majority districts.

This is only a preliminary step of a purely temporary nature, as it is evident that for the purposes of a final partition of these provinces a detailed investigation of boundary questions will be needed, and as soon as a decision involving partition has been taken for either province a boundary commission will be set up by the Governor-General the membership and terms of reference of which will be settled in consultation with those

concerned. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors. Similar instructions will be given to the Bengal Boundary Commission.

The Legislative Assembly of Sind (excluding Europeans) will at a special meeting also take its own decision on the alternatives mentioned above.

The position of the North-West Frontier Province is exceptional in view of its geographical situation and other considerations. Though two of its three representatives are participating in the existing Constituent Assembly it must be given an opportunity to reconsider its position, if the whole or any part of the Punjab decides not to join the existing Assembly. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the provincial government.

Arrangements will be made to ascertain the views of British Baluchistan as to which Constituent Assembly it desires to join.

The Sylhet district of Assam is contiguous to Bengal and is predominantly Muslim. If it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the provincial government to decide whether that district should form part of the Assam province or should be amalgamated with the new province of Eastern Bengal, if that province agrees. If the referendum results in favour of amalgamation with Eastern Bengal, a Boundary Commission will be set up to demarcate the Muslim majority areas of Sylhet district and contiguous Muslim majority areas of adjoining districts, which will then be transferred to Eastern Bengal.

If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the Constituent Assembly. The following numbers are prescribed on the basis of roughly one representative to a million of the population: West Bengal, 15 General and 4 Muslims; East Bengal, 12 General and 29 Muslims; West Punjab, 3 General, 12 Muslims and 2 Sikhs; East Punjab, 6 General, 4 Muslims and 2 Sikhs; Sylhet district, 1 General and 2 Muslims. In accordance with the mandates given to them these representatives will either join the existing Constituent Assembly or form the new Constituent Assembly.

Negotiations will have to be initiated on administrative consequences of any partition that may have been decided upon.

These decisions relate only to British India; the policy in regard to Indian States as contained in the Cabinet Mission's statement remains unchanged.

The major political parties have repeatedly emphasized their desire that there should be the earliest possible transfer of power in India. His Majesty's Government are willing to anticipate the date of June 1948 for the handing over of power by setting up an independent Indian Government or Governments at an even earlier date. Accordingly, legislation will be introduced during the current session of Parliament for the transfer of power this year on a Dominion Status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth.

§ 4. MAIN PROVISIONS OF THE INDIA INDEPENDENCE ACT, 1947

As from 15 August 1947, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

From 15 August 1947, the province of Bengal as constituted under the Act of 1935 shall cease to exist, and there shall be constituted in lieu thereof two new provinces to be known respectively as West Bengal and East Bengal. If the referendum in the district of Sylhet in the province of Assam favours amalgamation of that district with the province of East Bengal, that part of Assam will form part of East Bengal.

The boundaries of the provinces of East Bengal and West Bengal, and also of the province of Assam if the referendum in Sylhet district favours its amalgamation with East Bengal, will be determined by the award of a Boundary Commission appointed for that purpose.

From 15 August 1947, the province of the Punjab as constituted under the Act of 1935 shall cease to exist, and there shall be constituted two new provinces to be known respectively as the West Punjab and the East Punjab.

The boundaries of the two provinces will be finally determined by the award of a Boundary Commission appointed for that purpose.

The territories of Pakistan shall comprise the provinces of East Bengal, the West Punjab, Sind, British Baluchistan and the North-West Frontier Province if the referendum held in that province favours its joining the Constituent Assembly of Pakistan.

The territories of India will comprise the rest of British India.

For each of the new Dominions there shall be a Governor-General appointed by His Majesty; the same person may be the Governor-General of both the new Dominions unless the Legislature of either Dominion makes a law to the contrary.

The legislature of each Dominion shall have full power to make laws for that Dominion, including laws having extra-territorial operation

No law made by a Dominion shall be void or inoperative on the ground that it is repugnant to the laws of England or to the provisions of this or any existing or future Act of the British Parliament.

The Governor-General shall have full power to assent in His Majesty's name to a law passed by the legislature of the Dominion, disallowance of such laws by His Majesty or their reservation for the signification of His Majesty's pleasure shall cease

No Act of the British Parliament shall extend to a Dominion unless extended to it by a law of the legislature of that Dominion

From 15 August 1947, the British Government have no responsibility as respects the Government of any of the territories which, immediately before that day, were included in British India

From 15 August 1947, the suzerainty of His Majesty over the Indian States lapses, and with it all treaties and agreements in force between His Majesty and Rulers of Indian States, all functions exercisable by His Majesty in regard to them, all obligations of His Majesty towards them and all powers, rights, authority or jurisdiction exercisable by His Majesty by treaty, grant, usage, etc.

From 15 August 1947, also lapse any treaties or agreements between His Majesty and any persons having authority in the Tribal areas, and all power, rights, authority or jurisdiction exercisable by His Majesty in relation to Tribal areas by treaty, grant, usage, etc

The words 'India Imperator' and 'Emperor of India' shall be omitted from the Royal style and titles

The Constituent Assembly of a Dominion will, in the first instance, function as its legislature

Till the framing of a constitution, each Dominion and its provinces will be governed as nearly as possible in accordance with the Act of 1935¹, but the British Government will not

¹ In accordance with this provision which empowers the Governor-General to modify the Act of 1935, a draft adaptation of the latter in its application to the Dominion of India has been prepared

The main features of the draft are that as many as 105 out of the total of 321 sections in the Act of 1935 will disappear from 15 August 1947. Numerous sub-Sections and the first and second Schedules have also been omitted. Among the clauses that will go are those relating to the Crown's relationship with Indian States, Special Responsibilities of the Governor-General and Governors, Superintendence of the Secretary of State, India Office, Commercial Safeguards, etc.²

exercise any form of control over any Dominion or province, the Governor-General and the Governors will cease to act in their discretion or in their individual judgement, and no provincial Bill will be reserved for the signification of His Majesty's pleasure or assent.

The Governor-General shall make provision for bringing this Act into effective operation, for dividing between the new Dominions, and among the new provinces, the powers, rights, duties, property and liabilities of the Governor-General-in-Council, for making other necessary changes, for authorizing the continued carrying on for the time being of services and activities previously carried on behalf of British India as a whole, for regulating the monetary system and matters pertaining to the Reserve Bank of India.

No recruitment will hereafter be made to Services under the Crown by the Secretary of State.

All servants appointed by the Secretary of State and all judges of High Courts who continue to serve after 15 August 1947 in any of the new Dominions shall be entitled to receive from the Government the same or similar conditions of service as the changed circumstances may permit.

The Indian armed forces will be divided between the new Dominions. Provision will be made for facilitating the withdrawal of non-Indian forces from the new Dominions.

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